

**JOINT REGIONAL PLANNING PANEL
(East)**

JRPP No	2014SYE137
DA Number	MOD2014/0134
Local Government Area	Hurstville City Council
Proposed Development	Section 96(2) application to modify Development Consent No 12/DA-241 for a mixed retail/residential development to add an additional 4 storeys (24 units) to the approved development
Street Address	9 Dora Street, Hurstville
Applicant/Owner	Applicant: Summerside Group P/L c/- George El Khouri Architects Owner: Xycom P/L
Number of Submissions	Nineteen (19) adjoining and adjacent owners/residents notified Application advertised for fourteen (14) days No submissions received
Regional Development Criteria (Schedule 4A of the Act)	Value over \$20M
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> ▪ 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 ▪ Hurstville Local Environmental Plan 1994 ▪ Draft State Environmental Planning Policy (Competition) 2010 ▪ Draft Hurstville (City Centre) Local Environmental Plan 2014 • Hurstville Development Control Plan No 2
List all documents submitted with this report for the panel's consideration	Plans and information as previously submitted
Recommendation	Refusal
Report by	Paula Bizimis – Senior Development Assessment Officer Hurstville City Council

Assessment Report and Recommendation

ZONING	3(b) City Centre Business Zone
APPLICABLE PLANNING INSTRUMENTS	<ul style="list-style-type: none"> ▪ 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 ▪ Hurstville Local Environmental Plan 1994 ▪ Draft State Environmental Planning Policy (Competition) 2010 ▪ Draft Hurstville (City Centre) Local Environmental Plan 2014 ▪ Hurstville Development Control Plan No. 2: Section 2.2 - Neighbour Notification and Advertising of Development Applications, Section 4.2 - The Controls, Section 5.1 - Design Guidelines for Building, Public Domain and Open Space, Section 6.1 - Car Parking, Section 6.3 - Access and Mobility, Section 6.4 - Crime Prevention through Environmental Design, Section 6.5 - Energy Efficiency, Section 6.7 - Drainage and On-Site Detention Requirements, Section 6.9 - Waste Management, Section 6.10 - Development of a Heritage Item or on the Vicinity of a Heritage Item
HURSTVILLE LOCAL ENVIRONMENTAL PLAN 1994 INTERPRETATION OF USE	“Demolish”, “Shop”, and “Residential Flat Building”
EXISTING DEVELOPMENT	Approved development under construction
COST OF DEVELOPMENT	\$4,800,000.00 for proposed amendments
FILE NO	MOD2014/0134 (12/DA-241:4)
HAS A DISCLOSURE OF POLITICAL DONATIONS OR GIFTS BEEN MADE?	No

EXECUTIVE SUMMARY

- On the 19 November 2012 consent was granted by the Joint Regional Planning Panel (JRPP) to Development Application No. 12/DA-241 for the demolition of existing structures and construction of a thirteen (13) storey, forty-five (45m) high building containing two (2) ground floor retail units, four (4) basement levels of car parking, and twelve (12) floors of residential units (66 units in total). The development consent has been modified on two occasions. The approved modifications included the provision of an additional level to the development which contains 1 x 1 bedroom, 4 x 2 bedroom and 1

x 3 bedroom residential units which increases the total number of residential units in the development to 72 and the use of the ground floor common courtyard as leasable floor area in conjunction with shop 2, and construction of a new basement level 5 which provides 25 additional car spaces to the development (115 spaces in total).

2. The current Section 96(2) application seeks permission to provide an additional four storeys to the development containing an additional 24 residential units. The floor space ratio of the development will increase from 7:1 to 8.78:1 and the height of the development will increase from 45m to 57m.
3. The proposed development has been assessed against the requirements of the relevant environmental planning instruments and development control plans and does not comply with the maximum floor space ratio and height requirements and the onsite car parking requirements of the Hurstville Development Control Plan No 2. This is discussed in the report.
4. The application was notified/advertised to nineteen (19) adjoining and adjacent owners/residents in accordance with Council's requirements and no submissions were received in reply.

RECOMMENDATION

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

BACKGROUND

- On the 19 November 2012 consent was granted to Development Application No. 12/DA-241 for the demolition of existing structures and construction of a thirteen (13) storey, forty-five (45m) high building containing two (2) ground floor retail units, four (4) basement levels of car parking, and twelve (12) floors of residential units (66 units in total).
- On 15 April 2013 the JRPP approved a Section 96(2) application (2012/DA-241REV1) for the following:
 - Provide an additional level to the development which contains 1 x 1 bedroom, 4 x 2 bedroom and 1 x 3 bedroom residential units. The total number of residential units in the development will be 72 (additional floor area of 569sqm).
 - Remove the light void on the south west elevation, and relocate the ventilation and services shaft.
 - Enlarge the approved 1 bedroom dwelling and balcony into the void space of the reconfigured ventilation and services shaft.
- On the 4 December 2013 the JRPP approved a Section 96(2) application (MOD2013/0044) for the following:
 - To use the ground floor common courtyard as leasable floor area in conjunction with shop 2. This area has a floor area of 214.5sqm. The total leasable floor area of shop 2 will be 402sqm.

- The construction of a new basement level 5 which provides 25 additional car spaces to the development (115 spaces in total).

DESCRIPTION OF THE PROPOSAL

The current Section 96(2) application (MOD2014/0134) seeks permission to provide an additional four storeys to the approved development to provide 96 residential units in total (72 units approved). The additional four storeys will comprise Levels 14, 15 and 16 which will contain 1 x 1 bedroom, 4 x 2 bedroom and 1 x 3 bedroom residential units and Level 17 which will contain 2 x 3 bedroom residential units and three plant and equipment rooms.

Specifically, the modified development will comprise an 18 storey, 57m high building, with two retail units on the ground floor, five basement levels, and 17 levels above ground level containing seventy 96 residential units and will include the following:

Basement 5

- 25 car spaces including 2 disability accessible car spaces
- 18 storage areas
- 2 lifts and 2 stairs

Basement 4

- 25 car spaces including 2 disability accessible car spaces
- 18 storage areas
- 2 lifts and 2 stairs

Basement 3

- 25 car spaces including 2 disability accessible car spaces
- 18 storage areas
- 2 lifts and 2 stairs

Basement 2

- 25 car spaces including 2 disability accessible car spaces
- 18 storage areas
- 2 lifts and 2 stairs

Basement 1

- 13 car spaces including 3 disability accessible car spaces
- 28 storage areas
- 2 lifts and 2 stairs
- Pump room and electrical room

Ground floor

- Two (2) retail units (Shop 1 and Shop 2) with a floor area of 48sqm and 187.5sqm respectively (retail floor area of shops 235.5sqm) and an enclosed courtyard area with direct access to Shop 2 of 214.5sqm. This is included as gross leasable floor area in accordance with Council's LEP (total gross leasable floor area is 450sqm).
- Entrance lobby for residential units
- Commercial plant room
- Substation
- Waste room

- Vehicle entry/exit to basement levels
- OSD tank
- 2 lifts and 4 stairs

Level 1

- 1 x 1 bedroom residential unit
- 3 x 2 bedroom residential units (including 1 x adaptable dwelling)
- Common area including BBQ area, community general room, child play room and community room, outdoor seating area
- 2 lifts and 2 stairs

Levels 2 – 12

Each of the levels 2 to 12 will contain the following:

- 1 x 1 bedroom residential unit
- 3 x 2 bedroom residential units (including 1 x adaptable dwelling)
- 1 x 2 bedroom + study unit
- 1 x 3 bedroom residential unit
- 2 lifts and 2 stairs

Levels 13 - 16

- 1 x 1 bedroom
- 3 x 2 bedroom residential units (including 1 x adaptable dwelling)
- 1 x 2 bedroom + study unit
- 1 x 3 bedroom residential unit

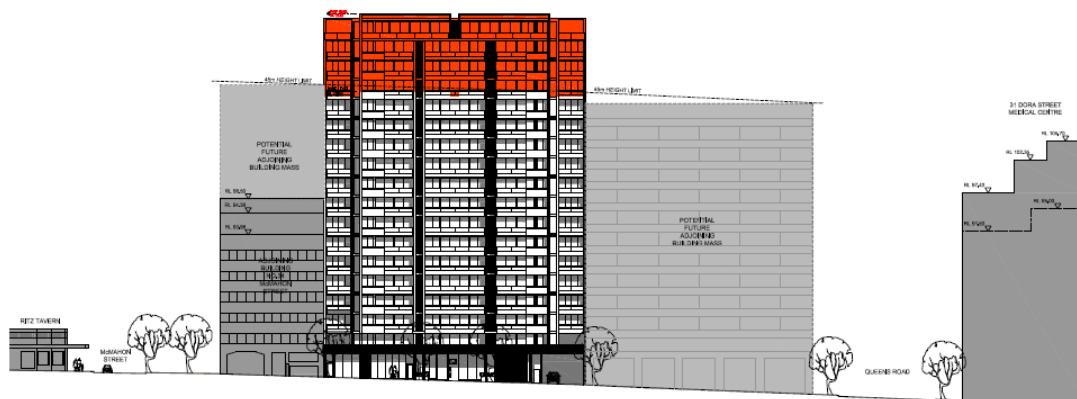
Level 17

- 2 x 3 bedroom residential units
- Plant room 1 boiler room
- Plant room 2 hydraulic
- Plant room 3 mechanical
- 2 lifts and 2 stairs

EASTERN
APARTMENTS

AMENDMENTS
1. ADDED LEVELS 14, 15, 16 & 17

AMENDED AREA



SHEET TITLE
STREETSCAPE DIAGRAM

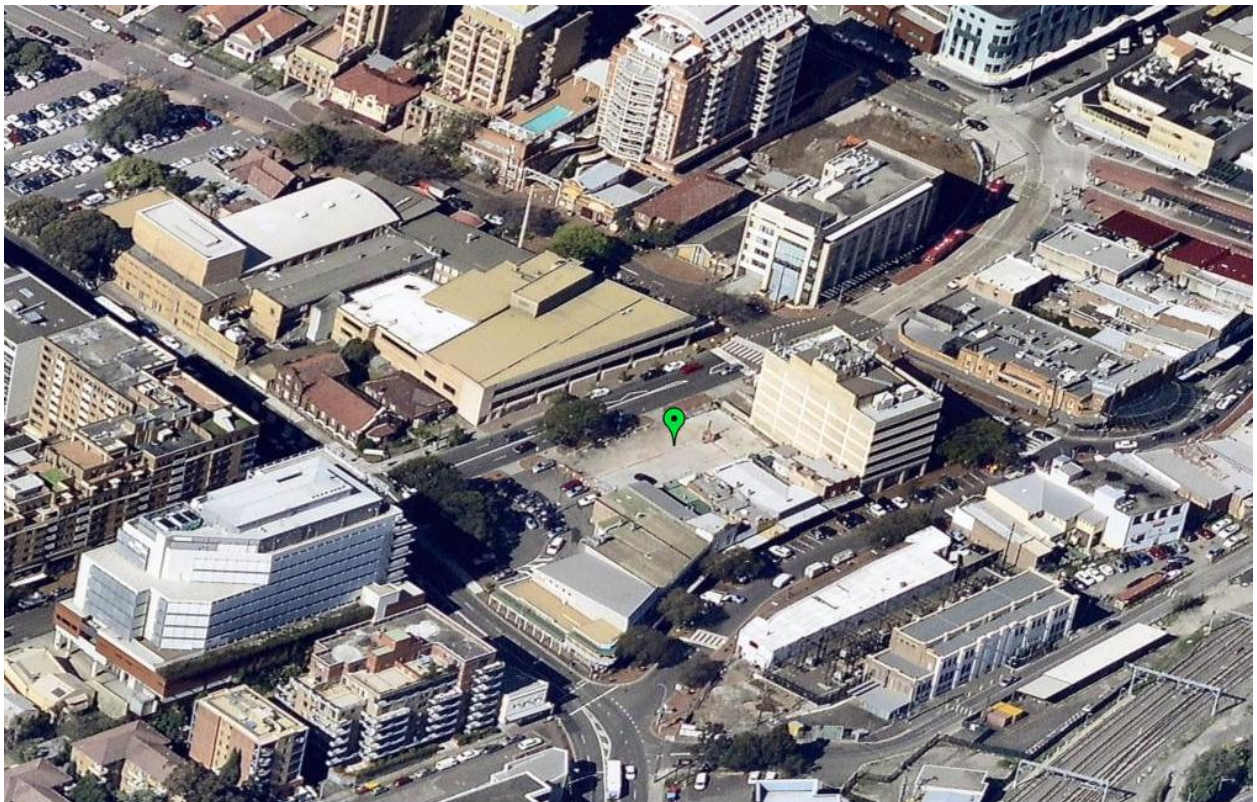
GEORGE EL KHOURI ARCHITECTS
GEORGE EL KHOURI
R.A.I.A. 547 N. 30 Windsor Street
S.A.S. 5 Elm Dale
L.L. 1000
Arch. Reg. No. 4443
Tel: 0201 9324 9378
Fax: 0201 9324 9377
www.gelkhouri.com

DESCRIPTION OF THE SITE AND LOCALITY

The subject site is located on the western side of Dora Street near the north western corner of MacMahon Street Hurstville. The site comprises four lots which are lots 1 and 2 DP 224116, lot 167 DP 335747, and lot 168 DP 1958. The site has a frontage of 40.2m, depth of 24.3m and a total site area of 976.9sqm. The subject site contained a single storey commercial building which was recently demolished.

Adjoining the site on the southern boundary (at the corner of MacMahon Street) is a six (6) storey commercial building known as MacMahon House. This building has telecommunication antennas and equipment on the roof. Adjoining the site on the northern boundary is an "at grade" car park. Adjoining the site to the rear are single storey shops and a part one/part two storey shop which face Forest Road. The part one/part two storey shop located at 372 Forest Road is identified as a heritage item in the Hurstville Local Environmental Plan. On the opposite side of Dora Street is the three storey building housing the Hurstville City Council offices and Council Chambers.

The area surrounding the subject site is characterised by commercial and residential developments of various heights ranging from 6 to 8 storeys and one 15 storey building known as MacMahon Plaza located to the east of the subject site on MacMahon Street.



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 can be considered by the consent authority 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*

The applicant's town planning consultant, Mecone has submitted the following information regarding the proposed development being substantially the same development as that for which consent was originally granted:

The modified development proposal remains substantially the same as the originally approved development for the following reasons:

- *The modified development proposal does not require a new development application and is considered to be substantially the same as the originally approved development given that the building footprint and setbacks remain unchanged from that already approved;*
- *The proposed modified development proposal represents an approximately 30% increase in floor area and similarly the same percentage in terms of additional building levels (factoring in basement levels); and*
- *The modified proposal does not seek to alter the approved land uses on the site, the general building appearance and architectural expression of the building will remain substantially similar to the approved development, and impacts on neighbouring properties will not be significantly altered as a result of the proposal (given that the building footprint and setbacks remains unchanged).*

In reaching this conclusion, we have considered guidance provided by the Land & Environmental Court Case, Moto Projects (No. 2) Pty Limited v North Sydney Council [1999] NSWLEC 280; (1999) 106 LGERA 298, which outlines principles for determining whether a S.96(2) application is 'substantially the same' as an originally issued development consent.

The assessment of 'substantially the same' needs to consider qualitative and quantitative matters. In terms of a quantitative assessment, the development will not reduce building separation to surrounding buildings and the building footprint will remain the same as approved.

In addition, the provision of car parking on the site, retail floor space, land use mix, boundary setbacks and private/communal landscaping will remain as originally approved. It is therefore demonstrated that in terms of a quantitative assessment, the proposed modifications remain substantially the same as the originally approved development. In terms of a qualitative assessment of the proposal, the relationship between the approved building and the surrounding properties remain essentially the same as originally approved, with the predominant residential character being maintained.

The proposal will not introduce any adverse amenity impacts on the surrounding properties in terms of loss of privacy, view loss or overshadowing. Shadow Diagrams have been prepared by George El Khouri Architects, demonstrate that the increase in building height will not result in any significant loss of winter sunlight between 9am to 3pm on 21 June to surrounding residential accommodation.

The appearance and architectural expression of the building when viewed from the public domain and surrounding properties will not be substantially altered as a result of the proposal.

On this basis, qualitatively, the proposal remains substantially the same as the originally approved development.

It is therefore demonstrated that the proposed modifications do not alter the essence or fundamental nature of the approved development, and it remains quantitatively and qualitatively the same as originally approved. It is therefore considered that the proposed development will not have any significant or adverse environmental impacts on the locality and it satisfies the criteria for classification as a Section 96(2) application.

Comment

The proposed development is not considered to be substantially the same development as that for which development consent has been granted. This is a result of the development being intensified with an additional 2286sqm of floor area (34.5% increase above that approved) which results in the development substantially exceeding the height and floor space ratio requirements of DCP 2. The approved development complied with the height requirements of 45m. The proposed development also results in the development not complying with the car parking requirements of DCP 2 as a result of the intensification of the residential component. The noncompliance with the floor space ratio, height and car parking requirements demonstrates that the development as modified is larger than that anticipated by the planning controls. In comparison, the approved development complied with the height requirement and provided onsite parking in excess of the requirements.

A Section 96 application was previously approved whereby an additional six residential units were provided to the development. The subject application which further increases the residential units by 24 results in an incremental increase to the residential component which will result in the development containing an additional 30 residential units (45.5%) from that originally approved. This is considered to be a substantial increase in the residential component from the original development considered and approved.

Further to this, the decision of *Bignold J in Peter Duffield and Associates Pty Ltd v Canada Bay City Council* determined that Council has no power to 'impose' a condition increasing development contributions under s94 of the EPA Act when determining an application to modify a development consent under s96 of the EPA Act, nor can it impose a 'new' condition under s94 of the EPA Act requiring development contributions when determining an application under s96 of the EPA Act. This being the case, the approval of the application will deprive Council of a significant amount of development contributions for the additional 24 units.

- (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

No submissions were received in response to resident notification/advertising of the proposed development.

Other Considerations Relevant to a Section 96(2) Application

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

The site is zoned 3(b) City Centre Business Zone under the provisions of the Hurstville Local Environmental Plan (LEP) 1994 and the proposed development, being a modification of the approved development, is permissible in the zone with consent. The modified development is consistent with the clauses of the LEP which are relevant to the development.

The objectives of the zone are as follows:

- “(a) to designate sufficient areas of land to meet the projected needs of the Hurstville Town Centre as a multi-functional regional centre,*
- (b) to facilitate development of land within the Hurstville Town Centre for commercial, retail, residential and community purposes,*
- (c) to provide a single business zone for the Hurstville Town Centre as a sub-regional centre,*
- (d) to facilitate the implementation of a development control plan for the Hurstville Town Centre:*
 - (i) by introducing appropriate floor space ratio controls,*
 - (ii) by encouraging an economically viable retail core which is centrally located and in close proximity to public transport,*
 - (iii) by enhancing employment opportunities and to service the needs of the local and regional community,*
 - (iv) by encouraging and facilitating the use of public transport,*

- (v) *by providing and enhancing pedestrian and public open space areas for shoppers and workers,*
- (vi) *by maintaining and improving the environmental and aesthetic quality of the Hurstville Town Centre and its surrounds,*
- (vii) *by ensuring adequate and accessible off-street car parking, and*
- (e) *to improve traffic flow in and around the Hurstville Town Centre.”*

The applicant's town planning consultant has submitted the following statement in support of the development's compliance with the objectives of the zone:

It is considered that the proposed development is consistent with the objectives of the zone. With regards to (d)(i) the floor space ratio of the development will be increased and this will result in the development not complying with the requirements of Hurstville Development Control Plan No 2 (DCP 2). The DCP stipulates the site is subject to a maximum FSR of 6:1. The approved development had a floor space ratio of 7:1 and the proposed floor space ratio will be 8.78:1.

Notwithstanding this non-compliance, the proposed increase to the floor space ratio will result in built form, which is consistent with the prevailing future built form of the Hurstville Town Centre. A 18 storey mixed-use development was approved at 458 Forest Road by the JRPP on 19 November 2013. A 16 storey mixed-use development is currently being assessed by the Council at 23-29 Tracey Street, Hurstville and has concept approval. The modified building height will be consistent with the built form of both these approved development and will not result in a significant material change to the building or the approved uses of the development.

The proposed development will comply with all other relevant requirements (with the exception of height and FSR) and will not result in any adverse impacts to surrounding development in terms of privacy, solar access or significant view loss. The provision of 24 additional residential units to the development is unlikely to generate vehicular movements significantly above that of the original development and as such there is unlikely to be adverse impacts to the surrounding developments in terms of traffic generation. This is discussed further in the traffic and parking report prepared.

The site's location within the Hurstville CBD and within close proximity to public transport is appropriate for a development that provides a mixed retail/residential development. The additional residential floor area is therefore ideally suited to this location and will help to reinforce the vibrancy and regional role of Hurstville city centre. For these reasons, the proposed increase to the floor area of the development is acceptable.

Comment

It is considered that the proposed development does not meet objectives (d)(i), (d)(ii), (d)(vii) and (e) of the zone for the following reasons:

- The provision of additional residential floor area results in the development not complying with the maximum floor space ratio and height requirements of DCP 2. In this regard the proposed development does not have a bulk and scale that reflects that anticipated by the controls. The zone of the subject site is 3(b) City Centre Business Zone and the commercial and retail focus of the development is eroded with the provision of additional residential floor area to the development.

- The additional four storeys will increase the floor space ratio of the development from 7:1 to 8.78:1. The approved FSR of 7:1 includes 248sqm relating to 17 car spaces provided in excess of Council's requirements. If these spaces aren't included in the calculation, the FSR was 6.56:1. The proposed increase to the scale of the development is more apparent when the floor space of the additional car spaces is identified. These spaces are located in the basement and do not contribute to the external appearance of the development. Were we to consider the "external" floor area only, the proposed development represents an additional 34.7% to the external bulk of the development. That is, the external portion of the development will be a third more than that anticipated by the planning requirements.
- The development as modified will result in a noncompliance with the onsite car parking requirements of DCP 2. Whereas the approved development had a surplus of 17 on site car parking spaces the proposed development will result in a deficiency of 10 on site car spaces.

The application is accompanied by a Traffic and Parking Assessment Report (prepared by Varga Traffic Planning P/L, dated 31 October 2014) which identifies that the provision of residential visitor parking spaces to the site can be shared with the retail car spaces as they are unlikely to be used particularly on Friday and Saturday nights when peak residential visitation levels occur. This is not necessarily agreed with as retail uses in the Hurstville City Centre can operate late into the night as is evidenced by the numerous restaurants and shops within the city centre. The use of the two ground floor retail units of the development should not be restricted by a necessity to share onsite car parking spaces with the residential component. This further erodes the viability of the only commercial uses of the development to the benefit of the additional residential floor area proposed. This does not encourage the viability of the retail core as identified in the objectives of the zone.

- The sharing of onsite car spaces by the commercial component and the visitor's to the residential uses is not considered reasonable or practical and is likely to result in an increase to on street parking. As such traffic movements in and around the Hurstville City Centre will increase in contradiction to the objective of the zone which is *to improve traffic flow in and around the Hurstville Town Centre*.
- In response to the planning consultant's identification of other sites that have been approved with a similar height, namely, 458-460 Forest Road and 23-39 Treacy Street, it is difficult to compare these sites to the subject site. These sites are not in the vicinity of the subject site and have different characteristics in that they are significantly greater in size, have extensive street frontages to one or more streets, and in the case of 458-460 Forest Road are located on a corner at the gateway of the Hurstville City Centre. Notwithstanding this, this development complies with the floor space ratio requirements and the 18 storey component represents approximately 20% of the footprint of the development with other parts of the development being at or below the maximum height requirement. In comparison, 100% of the footprint of the subject development exceeds the height requirement. The development at 23-29 Treacy Street was approved as part of a Part 3A permit and Council's development controls did not apply to the proposed development.

- The planning requirements for the sites which adjoin the subject site on Dora Street, (with a frontage to Dora Street between MacMahon Street and Queens Road) identify a maximum height of 45m and a maximum floor space ratio of 6:1 which are the same as that for the subject site. The same requirements are reinforced as development standards under the provisions of the Draft Hurstville (City Centre) Local Environmental Plan 2014. Whilst the draft local environmental plan is still in draft status it is reflective of the building envelope and future desired streetscape outcome anticipated for the subject site and the adjoining sites. As such the proposed development will result in a development which is larger in bulk and scale than the streetscape outcome anticipated by the current requirements and the draft local environmental plan for the subject site and future development on adjoining sites.

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

The application was not referred to the Design Review Panel for assessment. The application is accompanied by a “rules of thumb” assessment which identifies that the modified development is consistent with the requirements of the Residential Flat Design Code. Notwithstanding this, the proposed development has been assessed against the Design Quality Principles of SEPP 65 and is not considered to be consistent with Principle 1: Context, Principle 2: Scale and Principle 4: Density as follows:

Principle 1: Context

The desired future character of the site and adjoining sites is identified under the current requirements of DCP 2 and the Draft Hurstville (City Centre) Local Environmental Plan 2014 as being developments with a maximum height of 45m and a maximum floor space ratio of 6:1. The proposed development exceeds these proposed development controls and will result in a development that is not in context with the desired future character of the immediate area.

Principle 2: Scale

The scale of the proposed development is not consistent with the requirements for the subject site. The requirements specify a maximum height of 45m and a floor space ratio of 6:1. The proposed development has a height of 57m and a floor space ratio of 8.87:1 which results in a development of larger scale than anticipated by the requirements and as such is not consistent with Principle 2: Scale.

Principle 4: Density

As per the above comments the proposed development is of a larger density than the maximum 6:1 identified in the planning requirements. The proposed floor space ratio (or density) of 8.87:1 is not consistent with the stated desired future density identified for the subject site. Accordingly, the proposal is not consistent with Principle 4: Density.

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

A BASIX Certificate has been submitted with the application which identifies that the modified development meets the target scores.

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 (City Centre) Local Environmental Plan 2014 (draft LEP 2014)

The original development application relating to this development was subject to the provisions of Hurstville Local Environment Plan 1994 and was approved prior to the draft LEP 2014 being exhibited. As such the provisions of the draft LEP 2014 do not apply to the approved development or any subsequent modifications.

Notwithstanding this Council's Strategic Planning section has reviewed the application and has advised the following:

(The Strategic Planning section) does not support the application for reasons related to integrated land use and transport planning and the impending finalisation of the draft Hurstville LEP (Hurstville City Centre) 2014. The following information is provided:

Site Details

The subject site has a total area of 976.9sqm. It is located in the City Centre North precinct identified in the Hurstville City Centre Concept Masterplan 2004 and draft DCP No. 2 – Hurstville City Centre. A key aim of the precinct is to provide a focus for community and civic functions for the Hurstville City Centre.

Current and proposed planning controls

Currently, Hurstville LEP 1994, DCP No. 2 – Hurstville City Centre, draft Hurstville Local Environmental Plan (Hurstville City Centre) 2014 and draft DCP No. 2 – Hurstville City Centre apply to the subject site. Following is the summary of the current and proposed planning controls:

	Zone / Use	Maximum height	Maximum FSR
Hurstville LEP 1994	Zone 3 (b) – City Centre Business -	-	-
DCP No 2 - Hurstville City Centre	Retail/commercial on ground floor	45m	6:1
Draft Hurstville LEP (HCC) 2014	Zone B4 – Mixed Use	45m	6:1
Draft DCP No 2 - Hurstville City Centre	Retail/commercial on ground floor	-	-

Summary of past development and modification applications and current modification request

Development	Use	Height	FSR	Residential Units	Parking
19/11/12 (12/DA-241) - JRPP approved Dev. Application	Mixed Use	13 storeys (45m)	6:1	66	4 basement levels

15/04/13 (2012/DA-241REV1: D13/38244) – JRPP approved S 96(2) application	Mixed Use	14 storeys	6.56:1	72	4 basement levels
04/12/13 (MOD2013/0044) – JRPP approved S 96(2) application	Mixed Use (Increase in total retail leasable floor area)	14 storeys	7:1	72	5 basement levels (115 car spaces)
07/11/14 (Current Modification Application - MOD2014/0134)	Mixed Use (Increase in height, FSR and residential units)	18 storeys (57m)	8.78:1	96	5 basement levels (115 car spaces)

Strategic Planning comments

As evident from the above information, the current modification application (MOD2014/0134) exceeds the draft planning controls by a significant amount. Strategic Planning does not support this application for the following reasons:

1. Integrated land use and transport planning issues

- Council has developed a suite of planning documents for the City Centre over the last 10 years. Council adopted a draft City Centre LEP on 12 April 2012 that contained a total long-term potential gross floor area (GFA) capacity of approximately 1,141,000m². Council was required to undertake a TMAP exercise in response to the amount of floor space contained in the draft City Centre LEP, the potential accessibility and infrastructure implications and inconsistency with Direction 3.4 Integrating Land Use and Transport (Direction 3.4). The TMAP Study recommended Land Use Scenario 5 which provides the potential to develop 363,000m² of additional GFA by 2036. This results in a total GFA of approximately 861,354m² to the year 2036. This meant that the floor space within the City Centre needed to be reduced.
- Council has reduced the amount of FSR in the draft City Centre LEP on specific sites in response to the TMAP Land Use recommendation. This reduction resulted in a decrease in the floor space of approximately 44,000m² however the draft City Centre LEP still retains a level of inconsistency with Direction 3.4. The total GFA after the evening-out exercise is close to TMAP Scenario 6 (approximately 1,097,000m²); which is for longer-term potential growth (post 2036) and would only be realised in the longer term. Council proposes to rely on other recommendations that the TMAP provides such as increasing the use of public and active transport, constraining vehicle demand, road network improvements and amending the car parking rates in draft DCP 2.
- The current modification application proposes four (4) additional levels to the approved building above the maximum building height of 45m in the draft City Centre LEP. This extra height and floor space will further impact on accessibility, traffic and infrastructure issues in the draft City Centre LEP and result in inconsistency with Direction 3.4. The modification application does not sufficiently justify the increase in building height and FSR and it is noted

that no public benefits are being offered as part of this variation to the planning controls.

2. Finalisation of draft City Centre LEP

- Council exhibited the draft City Centre LEP and draft DCP 2 from 17 July to 14 August 2014. The draft City Centre LEP was adopted by Council on 17 September 2014 and was forwarded to the Department of Planning and Environment on 1 October 2014 for making. It is noted that at this stage, no submission has been received from the transport agencies on the draft City Centre LEP. This transport agency submission may further influence the timing and planning controls in the draft City Centre LEP.

3. Development Control Plans

The requirements of Hurstville Development Control Plan No 2 (DCP 2) apply to the subject site. The relevant sections of DCP 2 that apply to this application are as follows:

Section 2.2 - Neighbour Notification and Advertising of Development Applications

The application was notified/advertised to nineteen (19) adjoining and adjacent owners/residents in accordance with Council's requirements and no submissions were received in reply.

Section 4.2 - The Controls

The development as modified has been assessed against the "controls" that apply to the subject site as follows:

Block 10, Site 10B	Proposed	Compliance
Use Ground floor = retail/commercial Upper levels = commercial/residential	Ground floor = retail Upper levels = residential	Yes
Height 45m maximum	57m (18 storeys)	No (1)
FSR 6:1 maximum	8.87:1	No (2)
Setbacks <u>Street setbacks:</u> Build to street alignment for ground floor, upper floors residential setback in accordance with the Residential Flat Design Code <u>Ground floor:</u> full site coverage allowed <u>Top floors:</u> setback from rear boundary to form courtyard to adjacent properties at rear	The proposed development complies with the setback requirements	Yes
Awnings Cantilevered awning to Dora Street	Cantilevered awning to Dora Street	As approved

Balconies Minimum 1/unit, 8sqm in size 2m minimum width	Minimum 1/unit, 8sqm in size Minimum 2m dimensions	Yes
Vehicles Access Dora Street	Dora Street	As approved
Car parking in basement Residential: 1 car space/100sqm (8211sqm) = 83 spaces required Visitors: 1 car spaces/4 residential units (96 units)= 24 spaces required Retail: 1 car space/27.5sqm (231.8sqm) = 17 spaces required Car wash bay = 1 required Total = 125 car spaces	Total = 115 car spaces provided	No (3)

- (1) Height
(2) FSR
(3) Car parking

The development as modified does not comply with the requirements relating to height, floor space ratio, and car parking. The applicant's planning consultant has provided justification for the variation to the height and floor space ratio and provided a Traffic and Parking Assessment Report for the variation proposed to the onsite car parking. The justification provided identifies the same arguments as those relating to the development's compliance with the objectives of the zone which have been discussed previously in this report. As such it is not considered necessary to repeat the justification presented. As per the comments and reasons provided in the section of this report relating to the objectives of the zone, the proposed variations are not supported.

Clause 4.1.1.1 - Floor Space Calculations of DCP 2 identifies the objectives for floor space as being:

Under the Draft Hurstville Local Environmental Plan (Hurstville City Centre) 2011 the objectives of Clause 4.4 Floor Space Ratio are as follows:

- 1) *The objectives of this clause are as follows:*
 - (a) *To establish maximum floor space ratios that ensure the bulk and scale of development is compatible with the major centre status of the Hurstville City Centre.*
 - (b) *To facilitate an appropriate transition between the existing character of areas or localities that are not undergoing and are not likely to undergo a substantial transformation.*
 - (c) *To minimise the adverse impact of development on heritage items.*
 - (d) *To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.*

Clause 4.1.1.3 – Height of DCP 2 identifies the objectives for height as being:

Under the Draft Hurstville Local Environmental Plan (Hurstville City Centre) 2011 the objectives of Clause 4.3 Height of Buildings are as follows:

- 1) *The objectives of this clause are as follows:*
 - (a) *To establish maximum building heights that achieves appropriate urban form consistent with major centre status of the Hurstville City Centre.*
 - (b) *To facilitate an appropriate transition between the existing character of areas or localities that are not undergoing and are not likely to undergo a substantial transformation.*
 - (c) *To minimise the adverse impact of development on heritage items.*
 - (d) *To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.*

The proposed development is not considered to achieve the objectives relating to floor area and height as the proposed built form is of a scale that is larger than that identified by the planning requirements. The maximum floor area and height requirements apply to the subject site and adjoining sites with a frontage to Dora Street between MacMahon Street and Queens Road. The same requirements are reinforced as development standards under the provisions of the Draft Hurstville (City Centre) Local Environmental Plan 2014. These requirements are reflective of the building envelope and future desired streetscape outcome anticipated for the subject site and the adjoining sites. The proposed development will result in a development which is larger than the streetscape outcome anticipated by the current and proposed requirements and will not result in a consistent urban form.

Section 6.3 - Access and Mobility

The increase in the number of residential units has implications on the number of adaptable dwellings and accessible car parking spaces that are required to be provided in the development as follows:

Adaptable dwellings

For residential flat buildings adaptable housing is to be provided at a rate of 1 for the first 8 dwellings and 1 for every 10 dwellings or part thereof. A total of 10 adaptable dwellings are to be provided. The proposed development provides 16 adaptable dwellings.

Accessible residential car spaces

Where more than 50 car spaces are required for residential developments, 2% of these spaces are to be accessible. A total of 83 residential car spaces are required for the development which equates to 2 disability accessible spaces being required. The development provides 9 accessible car spaces.

4. Impacts

Natural Environment

The modified development is unlikely to have additional impacts on the natural environment from that previously considered.

Built Environment

The proposed development does not comply with the floor space ratio and height requirements and results in a development that is larger than that envisaged by the planning controls. In its context, the proposed development will be excessive in height and scale when compared to adjoining sites that are subject to the same requirements. 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 Impacts

The proposed development has no perceived adverse social impacts.

Economic Impacts

The proposed development may have economic impact on the retail component of the development if the proposed noncompliance with the onsite car parking requirement is accepted. This will result in the retail component sharing car spaces with the residential visitors which is likely to have an adverse impact on the viability of the retail units.

Suitability of the Site

The subject site has no impediments that preclude it from being developed for a mixed development. This however is subject to the proposed development being of a scale that is reflective of the planning requirements.

5. Referrals, Submissions and the Public Interest

Resident Submissions

The application was notified/advertised to nineteen (19) adjoining and adjacent owners/residents, and no submissions were received in reply.

Internal - Council Referrals

No internal referrals were required for this application.

External Referrals

No external referrals were required for this application.

6. Conclusion

The application seeks permission to modify development consent no. 12/DA-241 under the provisions of Section 96(2) of the Environmental Planning and Assessment Act by providing an additional four storeys to the development containing 24 units.

The proposed amendments will result in an increase to the approved floor space ratio and height of the development and a deficiency of ten onsite car parking spaces. The variation proposed to these requirements is not supported as the proposed scale of the development will be inconsistent with the desired future streetscape outcome anticipated by the current planning requirements and those identified in the draft local environmental plan. The deficiency in onsite car parking spaces is considered to be to the detriment of the retail uses on the site and their viability. Accordingly the application is recommended for refusal.

RECOMMENDATION

Pursuant to the provisions of Section 96 of the Environmental Planning and Assessment Act, as amended, the application known as MOD2014/0134 to modify Development Consent No 12/DA-241 granted on 19 November 2012 (as amended 4 December 2013) for the demolition of existing structures and construction of a fourteen (14) storey, forty-five (45m) high building containing two (2) ground floor retail units, five (5) basement levels, and thirteen (13) floors of residential units (72 units in total) be refused for the following reasons:

1. **REF1001 - Refusal Reason - Environmental Planning Instrument** - Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposed development does not comply with State Environmental Planning Policy 65 – Design Quality of Residential Flat Development. In particular, the development is inconsistent with the following Design Principles:
 - a) Principle 1 – Context
 - b) Principle 2 - Scale
 - c) Principle 3 - Built Form
2. **REF1001 - Refusal Reason - Environmental Planning Instrument** - Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposed development does not comply with the Hurstville Local Environmental Plan 1994 in terms of the following:
 - a) Clause 8 – Zone objectives of the 3(b) City Centre Business Zone
3. **REF1003 - Refusal Reason - Development Control Plan** - Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979, the proposed development does not comply with the following sections of Development Control Plan No 2 – Hurstville City Centre:
 - a) Section 4.1.1.1 – The objectives for Floor Space Calculations, and Section 4.1.1.3 – The objectives for Height
 - b) Section 4.2 – The Controls for Block 10 relating to height, floor space ratio and car parking
4. **REF1006 - Refusal Reason - Impacts on the Environment** - Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act, 1979, the proposed development is likely to have an adverse impact on the built environment as a result of the deficiency in on site car parking which is likely to increased vehicular movements around the site and Hurstville City Centre and economic impacts relating to the deficiency in onsite car parking for the retail component which is likely to adversely impact the viability of these uses.
5. **REF1008 - Refusal Reason - Public interest** - Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act, 1979, the proposed development is not considered to be in the public interest is likely to set an undesirable precedent.