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24 April 2015

**APPLICATION TO MODIFY DEVELOPMENT CONSENT  
S.96 (AA) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT**

**Development Application No:** 2012/DA-0325 (as amended)

**Date of Determination:** 31/10/2013

**Premises:** 454-456 Forest Road, Hurstville

**Description of Development:** Demolition of existing building and the construction of two residential flat buildings with basement parking.

**Proposed Modification/s:** This application seeks approval for various modifications resulting in 3 additional studio apartments on the upper three levels, an additional basement store room and an additional home office in unit 3 on the ground floor.

## BACKGROUND

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The original development application was lodged with Council on the 13<sup>th</sup> November 2012 and was approved by the Land and Environment Court on the 31<sup>st</sup> of October 2013. The consent was for the erection of two residential flat buildings over four levels of basement parking. The development included a total of fifty three (53) residential units and one (1) commercial unit.



Figure 1: Aerial view of the subject site, noting surrounding context. Sourced: SIX Mapping, accessed 06/05/2014

## SCHEDULE OF MODIFICATIONS

No modifications are proposed for the 4 storey building to the north of the site. All modifications occur at the 12 storey building situated to the south of the site towards Forest Road. As detailed in the accompanying architectural plans the proposal seeks approval for the following modifications:-

### Overall Development:

The overall modifications to the development are as follows:-

1. Number of units will be increased to 56 residential units, 1 commercial space and 1 home office space attached to an approved 2 bedroom ground floor unit.
2. The FSR will be increased from the approved FSR of 3.04:1 to an FSR of 3.09:1.

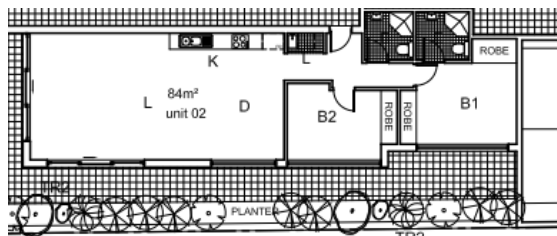
Specifically:-

### Basement Level:

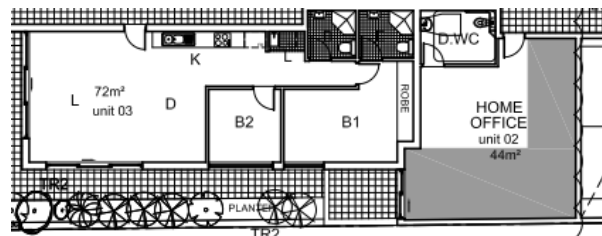
1. Reduce the garbage area in order to provide a store room for the shop above.

### Ground Floor Level:

1. The floor layout of unit 3 is to be modified and a home office is to be provided to the southern end of the unit.
2. The modification will result in an increase in floor area of 24m<sup>2</sup> at the ground floor.



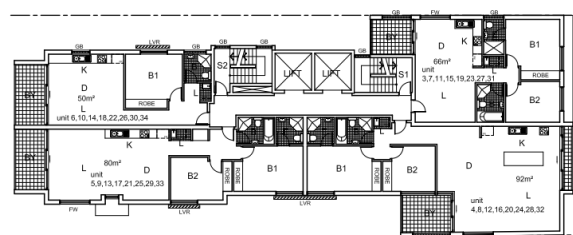
Approved Layout



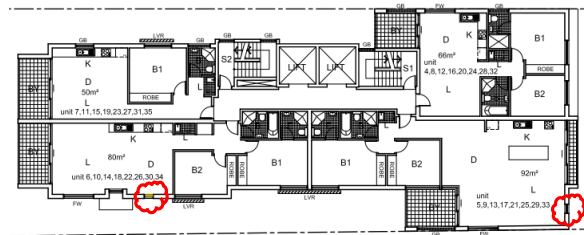
Proposed Layout

### Floor Levels 01- 08 (Front tower):

1. Introduce a small living room window on the southern side of the building at units 5, 9, 13, 17, 21, 25, 29 and 33.
2. Introduce a small dining room window on the western side of the building at units 6, 10, 14, 18, 22, 26, 30 and 34.



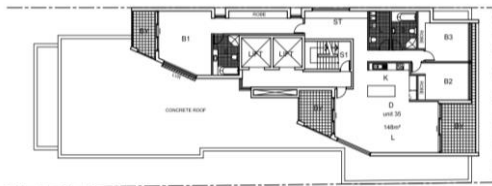
Approved Layout



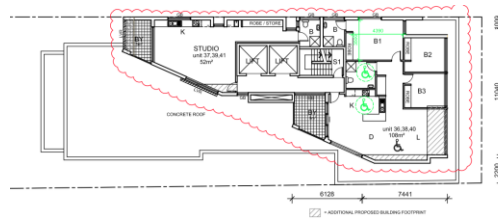
Proposed Layout. New windows identified by red clouding.

## Floor Level 09 -11:

1. Modify floor plan to convert the approved three bedroom unit to 1 studio apartment and 1 three bedroom unit on each level. Note that levels 9 to 11 will now all be identical.
2. The proposed modifications include enclosing the southern balcony as floor space, shifting of the top three levels slightly to the north, a small shift in part of the floor plan to the western boundary, 1m extension of northern façade balcony, introduction of glass brick windows along the eastern façade and introduction of an additional window in the southern façade.



Approved Layout (One three bedroom unit)



Proposed Layout (One studio apartment and one three bedroom unit)

## CONSIDERATIONS UNDER SECTION 96(AA) OF THE ACT

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This submission is made pursuant to Section 96(AA) of the *Environmental Planning and Assessment Act*. Section 96AA relates to the modification of consents granted by the Land and environment Court and provides that:-

- (1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development 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 the consent was originally granted and before that consent as originally granted was modified (if at all), and
  - (b) It has notified the application in accordance with:
    - (i) The regulations, if the regulations so require, and
    - (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
  - (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and
  - (d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

- (1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.”

### ***Substantially the same development***

The proposed changes do not alter the purpose or essence of the original consent, being for the erection of two residential flat buildings over four levels of basement parking. The proposal results in minimal changes to the overall building design.

The proposal will result in no change to the overall building height (RL 106.10) or general building composition. The proposal does include a slight increase in the overall gross floor area resulting in an FSR of 3.09:1 where the approved FSR was 3.04:1.

It is considered that the application as modified will result in substantially the same development.

### ***External Consultation***

The application will be referred to the Sydney East Joint Regional Planning Panel and in this regard, the prescribed fee has been paid.

### ***Notification***

It is understood that the application requires notification in accordance with Council’s notification DCP and in this regard, the prescribed fee has been paid.

### ***Consideration of Submissions***

This is a matter for Council in its assessment of the application under Clause 96(AA)(d).

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## **4.0 SECTION 79C MATTERS AND JUSTIFICATION**

Section 96(3) of the Act requires that in determining an application for modification of a consent, the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application. The sections considered to be of relevance are:-

### **79C (1) (a) (i) Any Environmental Planning Instruments**

#### **4.1 Hurstville Local Environmental Plan 1994**

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The proposed modifications are assessed against the provisions of the Hurstville Local Environmental Plan and are considered consistent with the aims and objectives.

The site is zoned 3(b) City Centre Business Zone under the provisions of the *Hurstville Local Environmental Plan 1994* (HLEP). The proposed use as a residential flat building including retail/commercial premises is permissible with the consent of the council.



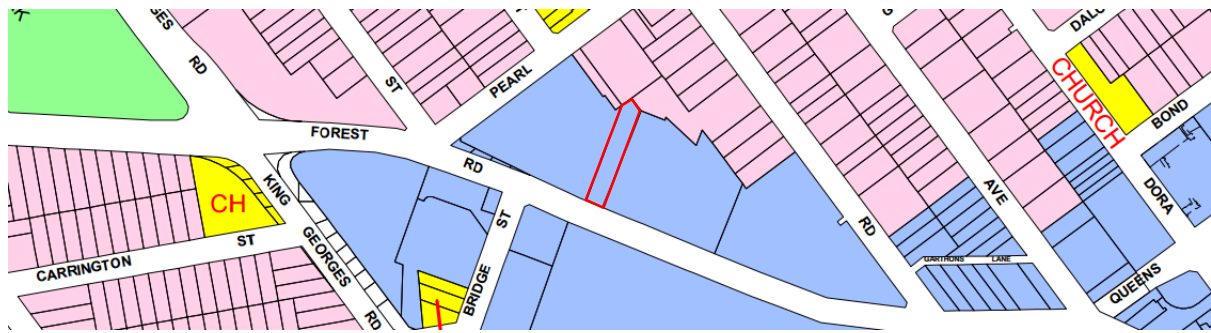


Figure 2: Location and zoning map.

### Objectives of the zone

- 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 proposed development will be of a size and scale envisaged by the LEP objectives. Although the proposed development is not new in terms of increased density, it does set a new standard in terms of high quality design that takes into consideration the surrounding built form.

The proposed modifications are consistent with the objectives of the zone and represent substantially the same development as approved under DA-0325-2012.

### 79C (1) (a) (iii) Any Development Control Plan

#### 4.2. Development Control Plan No.2 – Hurstville City Centre

##### Floor Space Ratio

A floor space ratio of 3:1 applies to the subject site. The site would be unjustifiably constrained if the current FSR control was applied. A residential FSR of 3.09:1 is proposed. This is a minor numerical non-compliance and is considered appropriate for the following reasons:-

- The proposed units have been slightly modified to improve unit mix without adding unnecessary bulk. The proposed modifications are largely internal and result in minimal change to the external façade of the building.

#### Height

No change is proposed to the existing approved height.

#### Balconies

Minor balcony modifications are proposed for the balconies on levels 09-11. New residential developments are to include balconies with a minimum area of 8m<sup>2</sup> and a minimum width of 2m. The modifications to the upper storey balconies continue to result in all balconies having a minimum dimension of 2m and minimum area of 8m<sup>2</sup>.

#### Car Parking Requirements

Min % on site	Use	Rate m <sup>2</sup>	Calculation	Required	Provided
70	Commercial	50	44m <sup>2</sup> ÷ 50	1 space	
70	Retail	25	40m <sup>2</sup> ÷ 25	2 spaces	
100	Residential	100	3871m <sup>2</sup> ÷ 100	39 spaces	
Visitor		1 per 4 units	56 ÷ 4	14	
<b>Total</b>				56	67

#### Visual Privacy

The modifications have been suitably designed to minimise the potential for privacy impacts. The modified balconies and windows to the upper storeys have suitable screening devices in place including glass brick privacy screens and blade wall partitions to minimise any visual privacy impacts to the rear adjoining developments. Further it is noted that the proposal remains suitably separated from the surrounding residential developments.

The proposed new windows on the southern façade will improve causal surveillance over the street and are of minimal visual privacy concern.

#### Adaptable Housing

This section of the DCP provides specific accessibility guidelines for the development residential flat buildings including shop premises.

Development Type	Adaptable Housing	General Requirements	Access Parking
Residential Flat Buildings	In developments containing more than 8 dwellings, a minimum of 1 adaptable dwelling, designed in accordance with AS 4299, shall be provided. Adaptable housing dwellings shall be provided thereafter at the rate of 1 per 10 dwellings or part thereof.	Access to required adaptable dwellings and relevant parking spaces in accordance with AS1428.2. Appropriate access for all persons through the principal entrance of the building shall be provided.	One space per 20 spaces or part thereof, where parking areas have more than 20 spaces but less than 50 spaces. 2% of parking where 50 or more parking spaces are provided in accordance with AS 2890.

Commercial Premises	Nil	<p>Access in accordance with AS 1428.2 and AS 1735 (Lifts, escalators, and moving walkways where required under the BCA).</p> <p>Access in accordance with AS 1428.2 is required to a principal entrance and to public areas in existing buildings or developments if it is proposed to carry out a substantial intensification of use or substantial alterations. In no case shall alterations result in a decrease in a decrease in access.</p> <p>Unjustifiable hardship may only apply in certain circumstances.</p>	One space per 20 spaces or part thereof, where parking areas have more than 20 spaces but less than 50 spaces. 2% of parking spaces where 50 or more parking spaces provided in accordance with AS 2890.
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The proposed development provides a total of 5 adaptable units, which is considered substantially compliant. If necessary council may deal with the shortfall by conditions of consent.

The proposed development provides street access to both the commercial and residential component of the development. The ground floor commercial suite is at grade and can be easily accessed via the pedestrian footpath.

All access ways such as hallways and lobbies are of a sufficient width to provide easy access to and from the residential component of the building.

The proposed development provides 7 disabled car spaces in accordance with the applicable control.

The proposed development will comply with all relevant access codes as stipulated by the BCA, *Disability Discrimination Act 1992* and any other policies deemed relevant by council.

#### 6.5.4 Residential Flat Design Code – Rules of Thumb

The proposal adheres with all fundamental principles of SEPP 65 as stated in the original Statement of Environmental Effects. SEPP 65 is supported by the Residential Flat Design Code (RFDC) which provides guidelines or 'Rules of Thumb' for best practice in residential design.

While only the studio apartments comply with the recommended dwelling size guidelines specified in the RFDC, the remaining units comply with the minimum standards being 50m<sup>2</sup> for a 1 bedroom apartment, 70m<sup>2</sup> for a two bedroom apartment and 95m<sup>2</sup> for a 3 bedroom apartment.

UNIT	TYPE	BEST PRACTICE	PROPOSED AREA
Unit 03	Two bedroom corner.	Internal: 80m <sup>2</sup> External: 11m <sup>2</sup>	Internal:72m <sup>2</sup> External:24m <sup>2</sup>
Unit 37,39,41	Studio.	Internal: 38.5m <sup>2</sup> External: 6m <sup>2</sup>	Internal:52m <sup>2</sup> External:8m <sup>2</sup>
Unit 36,38,40	Three bedroom	Internal: 124m <sup>2</sup> External: 24m <sup>2</sup>	Internal:108m <sup>2</sup> External:8.12m <sup>2</sup>

## 5.0 CONCLUSION

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This report, as submitted in accordance with Section 96(AA) of the Act, has demonstrated that the proposed modifications result in substantially the same development as that approved under DA No. 0325/2012.

As the proposed modifications are unlikely to have any significant impact on the environment or the amenity of the adjoining properties, and will be consistent with the purpose of the development consent, the application is considered to be reasonable and supportable.

The proposal satisfies the stated objectives of Council's Development Controls and the development maintains the amenity of the neighbouring properties.

We look forward to the early assessment and approval of this application. Please do not hesitate to contact us for any further information or clarification.

Yours faithfully,



Ella Rushforth  
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