

JOINT REGIONAL PLANNING PANEL (Hunter and Central Coast)

Supplementary Council Assessment Report

Panel Reference	2016HCC022
DA Number	49564/2016
Local Government Area	Central Coast Council
Proposed Development	Residential Flat Building - (101 Units) & Demolition of Existing Structures
Street Address	Lot 1-3 DP 17420, Lots 14, 15, 23, 24 DP 17440, Nos 177-181 Albany Street, 8-10 Duke Street and 2-4 Auburn Street, Point Frederick
Applicant	Point Frederick Real Pty Ltd
Owner	Point Frederick Real Pty Ltd
Date of DA Lodgement	31/03/2016 Amended plans lodged 15/07/2016, 02/09/2016, 19/07/2017 and 10/08/2017.
Number of Submissions	104 to the original application. 58 to the amended plans considered by JRPP on 25 May 2017. (Amended plans the result of the JRPP deferral not required to be exhibited).
Recommendation	Approval - subject to conditions
Regional Development Criteria (Schedule 4A of the Act)	Development with a capital investment value over \$20m
List of all relevant s79C(1)(a) matters	<ol style="list-style-type: none"> 1. Environmental Planning & Assessment Act 1979 - Section 79C 2. Local Government Act 1993 - Section 89 3. Roads Act 1993 4. Gosford Local Environmental Plan 2014 5. Gosford Development Control Plan 2013 6. State Environmental Planning Policy No 55- Remediation of Land. 7. State Environmental Planning Policy (Infrastructure) 2007 8. State Environmental Planning Policy (State and Regional Development) 2011 9. State Environmental Planning Policy 65-Design Quality of Residential Flat Buildings
List all documents submitted with this report for the Panel's consideration	JRPP Report 25 May 2017 Amended Proposed Conditions of Consent Amended Architectural Plans Amended Landscape Plans Amended Applicant's Clause 4.6 submission Acoustic Specification Garage Door/Traffic Noise
Report prepared by	R A Eyre
Report date	7/9/2017

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 – Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable comments to be considered as part of the assessment report.



Title: Development Application No. 49564/2016, Proposed Residential Flat Building - Three Blocks (101 Units) & Demolition of Existing Structures on Lot 1 DP 17420, Lot 2 DP 17420, Lot 3 DP 17420, Lot 24 DP 17440, Lot 23 DP 17440, Lot 15 DP 17440, Lot 14 DP 17440, 177-181 Albany Street, 8 - 10 Duke Street, 2 - 4 Auburn Street, Point Frederick
SUPPLEMENTARY REPORT

Department: Environment and Planning

Report Purpose

To enable the determination of a development application. This report is to be read in conjunction with the previous assessment report dated 10 May 2017.

Applicant	Point Frederick Real Pty Ltd
Owner	Point Frederick Real Pty Ltd
Application Number	49564/2016
Description of Land	Lot 1-3 DP 17420, Lot 14, 15, 23, 24 DP 17440, 177 -181 Albany Street, 8 - 10 Duke Street, 2 - 4 Auburn Street, Point Frederick
Proposed Development	Residential Flat Building - (101 Units) and Demolition of Existing Structures
Zoning	R1 General Residential
Site Area	5114m ²
Existing Use	Dwelling-houses
Value of Works	\$34,530,172.00

Summary

It is proposed to demolish the existing dwelling houses on the site and erect a five storey residential flat building containing 101 apartments. The apartments will be in three buildings over two basement car parking levels for 147 vehicles. Vehicular access will be from both Duke Street and Auburn Street.

Application Type	Development Application – Local.
Application Lodged	31/03/2016
Delegation level	Joint Regional Planning Panel

Advertised and Notified / Notified Only	Amended plans not required to be notified.
Submissions	N/A
Disclosure of Political Donations & Gifts	No

Recommendation

- A JRPP assume the concurrence of the Secretary of the Department of Planning and Environment for the use of Clause 4.6 to vary the maximum building height standard of clause 4.3 and 8.9 of the Gosford Local Environmental Plan 2014 (GLEP 2014) to permit the proposed development.
- B JRPP as consent authority grant consent to Development Application No 49564/2016 for Residential Flat Building - Three Towers (101 Units) & Demolition of Existing Structures on: 1-3 DP: 17420, 14,15,23,24 DP: 17440, 177 -181 Albany Street, 8 and 10 Duke Street, 2 and 4 Auburn Street Point Frederick.
- C In accordance with Section 95(1) of the Environmental Planning & Assessment Act 1979, this consent shall be valid for a period of two (2) years.
- D The objectors are notified of JRPP's decision.
- E The External Authorities be notified of the JRPP's decision.

Assessment

This application has been assessed using the heads of consideration specified under Section 79C of the Environmental Planning & Assessment Act 1979, Council policies and adopted Management Plans.

Summary of Non Compliance

Policy	Details
GLEP 2014	Maximum building height- variation up to 1.2m (7.7%)
Gosford Development Control Plan 2013 (GDCP 2013)	Variation to maximum floor plate and side and rear setbacks (above 12m in building height).

Background

The JRPP considered a planning report on the above proposal at its meeting of 25 May 2017 and deferred the application for the following reasons;

Reasons for Deferral

The reasons for the decision of the Panel were:

1. The proposal had not provided sufficient evidence regarding an attempt to purchase the resulting "isolated site" at No. 6 Auburn Street, and the overall proposal and area would benefit from incorporation of that site into the proposal;

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2. Concerns were held regarding interfaces between this site and neighbouring land. The panel noted in particular that the impact arising from the proposed driveway immediately adjoining No. 12 Duke Street to the east could be addressed through redesign of the site as well as landscaping;
 3. Better site planning, compliance and reduced impacts would result from movement of Buildings A and B westwards; and
 4. Privacy impacts to neighbouring land warranted greater attention to materials, screening and landscaping.

Terms of the Deferral

The development application was deferred. The applicant must provide further written evidence regarding attempts to incorporate the "isolated site" at No. 6 Auburn Street, Point Frederick, having regard to the planning principle within *Karavellas v Sutherland Shire Council* [2004] NSWLEC 25.

While further negotiation and process occurs arising from the above, the applicant is invited to submit an amended proposal as soon as is practicable to the Council, addressing the matters below:

- Movement of the driveway from Duke Street to the basement to the west, between Buildings A and B, with appropriate details for the associated driveway and landscaping of the courtyard between the buildings, together with landscaped treatment of the eastern setback to No. 12 Duke Street;
- Buildings A and B should be moved 1.5m westwards, to achieve a minimum eastern side setback to Building B of 7.5m to the edge of balconies on levels 1-4 and 8.5m to the edge of the balcony at Level 5;
- Revised basement and landscaping plans arising from above;
- Revision to the balustrades and consideration of screening/materials along the eastern elevation of Buildings B and C to consider and ameliorate privacy impacts on adjoining land to the east;
- Details to ameliorate noise and smell impacts from the driveway to Auburn Street to neighbouring properties to the east;
- Any revisions resulting from the negotiations with No. 6 Auburn Street, if that leads to the property being incorporated into the proposed site area, including consideration to movement of the driveway off the eastern boundary.
- Submission of a revised Clause 4.6 Variation Request to reflect the revised plans, if necessary, and a revised BASIX Certificate.

The applicant has submitted amended plans and supporting documentation to address the issues raised by the Panel.

The Proposal

The amended plans include the following amendments:

- Building A moved 1m westward so that the building setback to Albany Street is reduced from 3m to 2m.
- Building B moved 1.5m westward so that the separation between Buildings A and B is reduced from 12m to 11.5, and Building B is setback 7.5m instead of 6m from the eastern boundary with 12 Duke Street.
- The driveway in Duke Street moved 1.5m away from the side boundary with 12 Duke Street and provided an acoustic and landscape buffer to the adjoining site. This results in the loss of 3 basement car parking spaces and an increase of deep soil planting from 17.5% to 17.8% of the site.

The amended proposal now comprises:

- Three residential flat buildings containing 101 units. This consists of:
 - 20 x one bedroom + studio units
 - 42 x two bedroom units, and
 - 39 x three bedroom units
- Two basement levels of car parking for 147 vehicles, 42 bicycle spaces and 7 motorcycle spaces.
- A height of 5 storeys.
- Driveway access from Duke Street and Auburn Street.
- Deep soil planting of 912m² (17.8%).

The proposal is divided into three buildings.

- Building A is located on the corner of Duke Street and Albany Street and will contain 37 units.
- Building B is located on Duke Street with 36 units.
- Building C is located on Auburn Street and contains 28 units.



Figure 1- Image of development viewed from corner of Albany Street and Duke Street

The Site

The development site consists of seven adjoining lots. Two of the lots front Auburn Street, two front Duke Street, and three front Albany Street (see figure 2).

Existing development on the site is generally older single and two storey dwelling houses. These have been progressively demolished under separate Complying Development Certificates.

The site has a level of about RL 15m at the north east corner in Auburn Street, rising to about RL 20m at the south east corner in Duke Street and on the western side at Albany Street. A crest of about 1m-1.5m runs across the middle of the three lots fronting Albany Street.

The site is located on the southern side of the Central Coast Highway (York Street) and in close proximity and walking distance to the Highway (and bus stops) and three schools. These include two high schools and a primary school. The site is located on the southern boundary/limit of the Gosford City Centre area.

The Surrounds

This area is predominately characterised by a mix of residential uses ranging from single dwelling houses to residential flat buildings (see figure 2). The area is in transition toward a medium density development zone.

The southern side of Duke Street is zoned R2 with a maximum building height of 8.5m. Development in this area south of Duke Street is mainly single dwelling houses.

On the eastern side fronting Duke Street is a town house development with courtyards/private open space located on the western side of the units.

Existing development in Auburn Street is a mix of new and old single dwelling houses and residential units. Auburn Street is a cul-de-sac.

The adjoining development on the north is residential flats and 6 Auburn Street which is a new dwelling house which will be isolated between the proposed development and existing residential units in Albany Street.



Figure 2 -Locality Plan

The extent of changes were minimal and had the effect of increasing setbacks to neighbours, increasing landscaping and deep soil which will reduce impacts on adjoining development. The amended plans were therefore not required to be re-exhibited.

Applicable Planning Controls

The following planning policies and legislation are relevant to the development and were considered as part of the assessment.

- Environmental Planning & Assessment Act 1979 – Section 79C
- Local Government Act 1993 – Section 89

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Gosford Local Environmental Plan 2014 (GLEP 2014)
- Gosford Development Control Plan 2013 (GDCP 2013)
- Protection of the Environment Operations Act 1997
- Roads Act 1997
- State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65)
- State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)
- State Environmental Planning Policy (State and Regional Development) 2011

Permissibility

The subject site is zoned R1 General Residential under GLEP 2014 (see figure 3). The proposed development is defined as a residential flat building which is permissible in the zone with consent of Council.

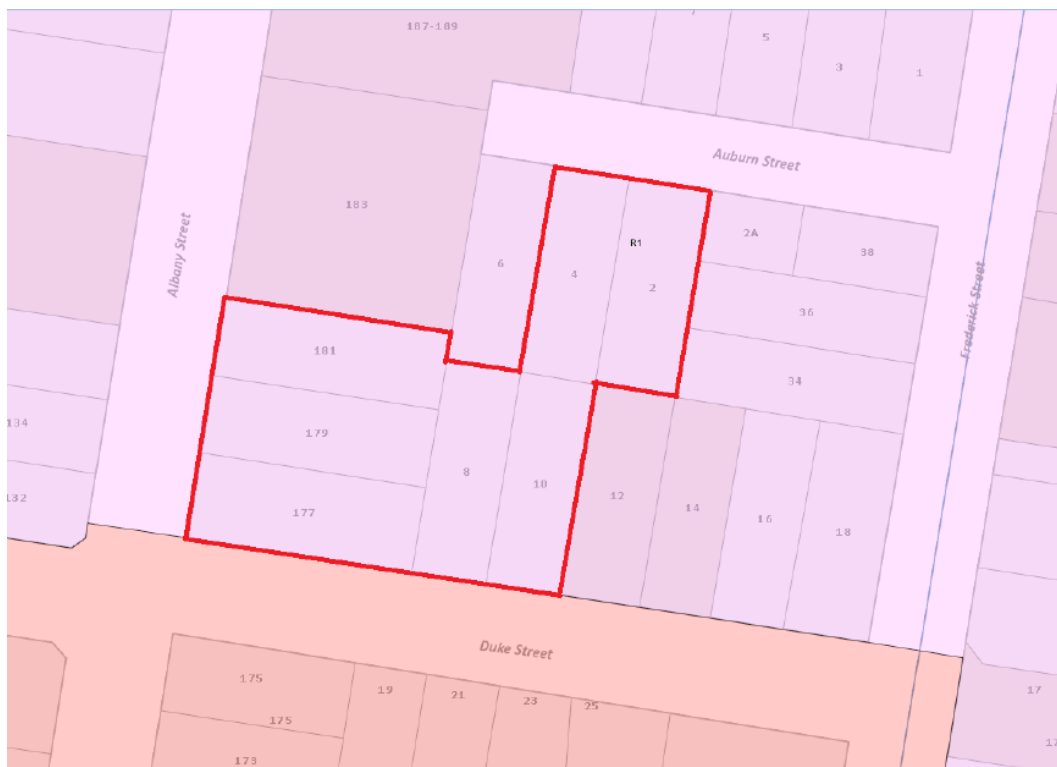


Figure 3 - Zoning Plan

State Environmental Planning Policies

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

The amended application is supported by a BASIX certificate which confirms the proposal will meet the NSW government's requirements for sustainability, if built in accordance with the commitments in the certificate.

The proposal is considered to be consistent with the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

State Environmental Planning Policy 55 Remediation of Land (SEPP 55)

Clause 7 of SEPP 55 requires the consent authority to consider whether the land is contaminated when determining a Development Application.

The past use of the land has been for residential purposes. Council has no information to indicate the land may be contaminated therefore, a contamination report is not required.

State Environmental Planning Policy (Infrastructure) 2007

The proposal is not one which must be referred to the Roads & Maritime Services under the SEPP Infrastructure. However, due to the issues raised in public submissions, the application was referred to the RMS. The RMS advise that they have no objections to the proposal, as it is considered there will be no significant impact on the nearby classified (State) road network.

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

The proposal is subject to the requirements of SEPP 65. The application is supported by a Design Verification Statement prepared by Caine King (ARB #7974) and an assessment of compliance against the Apartment Design Guide (ADG) design criteria. These verify that the design quality principles set out in State Environmental Planning Policy No 65 – Apartment Design Guide (ADG) are achieved.

Council has assessed the proposal against the design quality principles which apply under SEPP 65 and conclude that the proposal meets the principles to a satisfactory degree.

Councils Architect has assessed the amended plans and the Joint Regional Planning Panels concerns and advises;

“The applicant has submitted further amended landscape drawings in response to comments from the Joint Regional Planning Panel (JRPP) and Council.

The application is subject to SEPP 65 and has been assessed against the nine Design Quality Principles in the SEPP, the Design Criteria and Objectives in the Apartment Design Guide (ADG) and the Gosford Local Environment Plan (GLEP).

The Panel expressed concern at the location of Building B and the Duke Street driveway and access ramp on the eastern boundary and its impact on the adjoining residential flat building.

The application has been amended to address this issue.

The amendment has moved Building B and the Duke Street vehicle ramp 1.5 metres to the west. This creates a 1.5 metre wide landscaped deep soil zone 1.5 metres wide between the ramp and the eastern boundary and a separation distance of 4.5 metres from the driveway to the adjoining residences. This setback will be planted with Acmena and Syzygium, both dense growing Australian native species that will provide screening to and from the proposed building B and improve outlook for the existing units.

A 1800mm high solid boundary fence is proposed to provide further privacy.

Building B is now setback 7.5 metres from the side boundary or 25% above that required by the ADG. This provides a total building separation of approximately 11.5 metres.

A report by an acoustic engineer has been providing addressing issues of possible noise from vehicles and the garage door. Any recommendations made in the report will be made a condition of consent.

The increased driveway setback, building setback, acoustic measures and landscaping are considered to have successfully addressed the impacts on the adjoining site.

It is acknowledged that the application will result in overshadowing after 2pm in mid winter however, it will have no impact before this time. As the application complies with height controls and exceeds minimum setback controls, this is considered acceptable.

As the deep soil zone and landscaping also provides an outlook from adjoining units the installing an open style of fence such as metal or timber pickets should be discussed with the adjoining residents."

Comment

The amended plans are supported as it is considered that the changes made provide for appropriate and approved amenity for adjoining properties.

Response to Panels Reasons for Deferral

- 1. The proposal had not provided sufficient evidence regarding an attempt to purchase the resulting "isolated site" at No. 6 Auburn Street, and the overall proposal and area would benefit from incorporation of that site into the proposal;**

In *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251, Tuor C stated;

"17. The general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

- Firstly, is amalgamation of the sites feasible?
- Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

18 The principles to be applied in determining the answer to the first question are set out by Brown C in ***Melissa Grech v Auburn Council*** [2004] NSWLEC 40. The Commissioner said:

Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.

Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.

Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979.

19 In the decision ***Cornerstone Property Group Pty Ltd v Warringah Council*** [2004] NSWLEC 189, I extended the principles of Brown C to deal with the second question and stated that:

The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.

To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments."

Applicant's Response

In response to the first principle, of an offer being made, a statutory declaration has been submitted by the applicant outlining the following attempts to purchase 6 Auburn Street;

- 4 February 2016. Offer to purchase for \$1,000,000 through owners Real Estate agent. Offer rejected 9 February 2016.
- 27 June 2017. Letter by registered mail from Central Real requesting advice from owner if interest in selling.
- 7 July 2017. Email from owners daughter with letter from owner advising "I wish to confirm that I have no interest in selling my property at 6 Auburn Street, Point Frederick."

Comment

In light of the owner of 6 Auburn Street not being interested in selling, amalgamation of 6 Auburn Street into the development is not feasible. The offer made by the developer is considered a reasonable offer in light of similar sales in this area at the time of the offer. It should also be noted that no counter offer was made by the owner of 6 Auburn Street to continue negotiations. Further since this time, the owner has confirmed no interest in selling the property. Therefore this answers the first question from *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251.

The second principle requires demonstration that if amalgamation is not feasible, the orderly and economic use and development of 6 Auburn Street can be achieved.

If 6 Auburn Street is developed separately, the maximum height limit is 12m and the maximum FSR is 0.75:1 under clause 8.3(2) of the GLEP 2014. The applicant has submitted schematic sketches (see figure 4) that show this would permit two x 4 bedroom townhouses, or four x 2 bedroom multi dwelling housing units, as shown in figure 4. Similar developments have been approved by Council on similar lots in this location albeit with some variations to the planning controls.

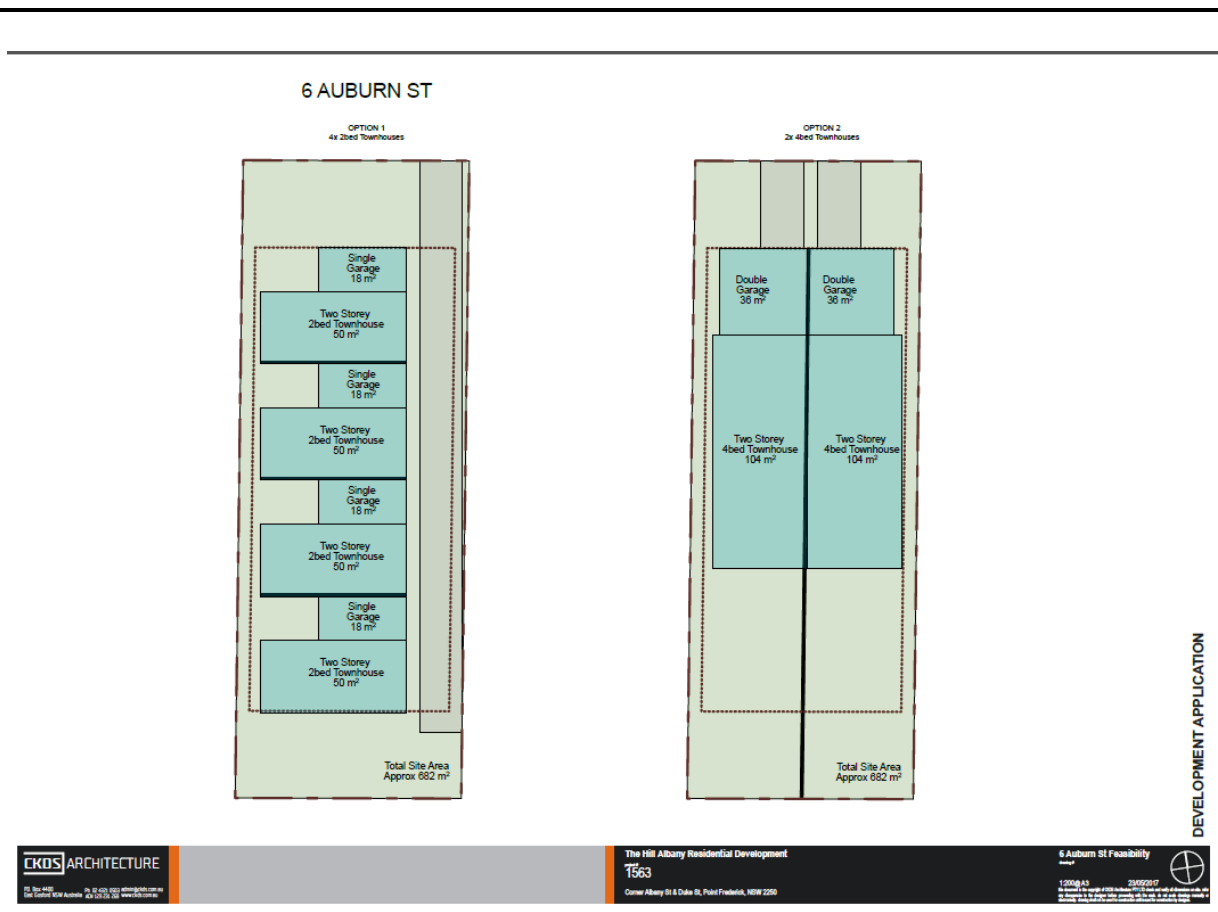


Figure 4- Development Potential Diagram 6 Auburn St.

It is concluded that both sites can achieve a development that is consistent with the planning controls for each site, or a development of appropriate urban form and with an acceptable level of amenity can be achieved.

It is noted that the land is at the fringe of the city centre planning controls and as such, into the future the development of this area will comprise a mix of higher and medium density forms. This provides for a reduction in density and transition toward lower density localities.

The retention of the existing dwelling on 6 Auburn Street or redevelopment in line with figure 4 both are consistent with this transitional stepping of density and mix of built forms.

It is considered that the applicant has suitably demonstrated that an orderly and economic use of the land could occur on the site in the future, despite the clear indication from the current owner that they do not wish to sell.

2. **Concerns were held regarding interfaces between this site and neighbouring land. The panel noted in particular that the impact arising from the proposed driveway immediately adjoining No. 12 Duke Street to the east could be addressed through redesign of the site as well as landscaping;**

Applicants Response

To provide greater built form relief to No. 12 Duke Street, the development has been redesigned in the following manner:

- Building A (western building) has moved 1.0m further west resulting in a reduced street setback to 2m. This now results in a 1m non-compliance against DCP 2013 –Part 4.1 (4.1.2.2.a) which is considered acceptable given it only occurs for the open balconies of Units A-G-1 and A-G-6.*
- Building B (south-eastern building) has moved 1.5m further west, increasing the setback between the driveway and No. 12 Duke Street to 1.5m and between Levels 1-3 to 7.5m (exceeding the DCP side setback requirement). This provides an opportunity to include landscaping along the eastern boundary to further soften the built form. As a result of moving the buildings in the above manner, the following has also occurred:*
- The cores of Buildings A and B have shifted causing a total reduction of three (3) car spaces and a three (3) space non-compliance against DCP 2013 – Part 4.1 (4.1.4.4). This is considered acceptable given the location of the site adjacent to a regular bus service and the fact that the shortage represents only a 2% non-compliance.*
- Deep soil area provided has increased from 896m² to 912m². The proponent investigated the option of relocating the driveway to between Buildings A and B, however traffic investigations undertaken by BJ Bradley & Associates confirmed the following:*
- The gradients along Duke Street do not enable an access ramp to be constructed to Duke Street at another location without either compromising internal vertical clearances over the internal parking aisles or exceeding the desirable ramp gradients.*
- It is desirable that the main vehicular access on Duke Street for the proposed residential development be located as close as possible to the eastern boundary to minimise the volume of traffic along Duke Street as much as practicable and to minimise any potential for drivers entering and departing the basement parking levels to use the Albany Street driveway as a short-cut.*

Refer to figures 5 and 6.



Figure 5 - Drawing DA-104 Rev D. Previous ground floor plan.

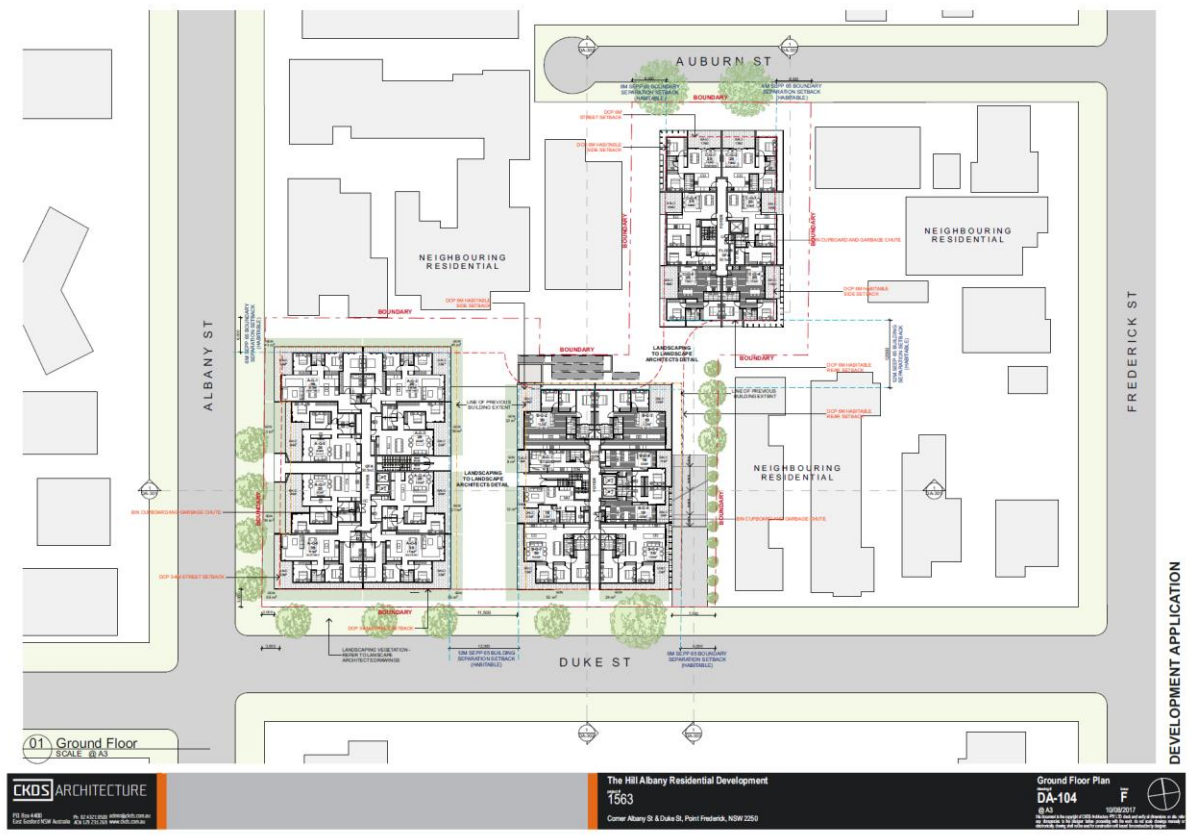


Figure 6 - DA -104 Rev F. Amended ground floor plan

The applicant has submitted a report from a traffic engineer in support of the above which states;

Following the Meeting of the Joint Regional Planning Panel at Gosford on 25 May 2017 regarding the subject residential development at Point Frederick, the Architects have further evaluated the potential for relocation of the vehicular access on the Duke Street frontage.

My Traffic Assessment Reports were based on the location of the Duke Street vehicular access as being adjacent to the eastern boundary on Duke Street. I have also considered alternative options for vehicular access to Duke Street for the subject residential development.

In my opinion, the originally proposed location adjacent to the eastern site boundary on Duke Street is the most appropriate location, for the following reasons:

- The gradients along Duke Street do not enable an access ramp to be constructed to Duke Street at another location without either compromising internal vertical clearances over the internal parking aisles or exceeding the desirable ramp gradients.*
- Even if ramp gradients and vertical headroom clearances had been satisfactorily achievable, other factors need to be considered.*
- Most of traffic accessing the Point Frederick Street area does so via the signalised intersection of Frederick Street and York Street.*
- My Traffic Assessment Reports assumed that approximately 70% in inward peak hour movements and 80% of outward peak movements would be via the signalised intersection of Frederick Street and York Street.*

It is desirable that the main vehicular access on Duke Street for the proposed residential development be located as close as possible to the eastern boundary to minimise the volume of traffic along Duke Street as much as practicable and to minimise any potential for drivers entering and departing the basement parking levels to use the Albany Street driveway as a short-cut. Drivers occupying the residential development with the Duke Street access close to the eastern boundary are more likely to utilise that access driveway because of the efficiency of the aisle layout and ramp location. The more attractive the Duke Street access appears, the more likely it is that more drivers will utilise the Duke Street access in preference to the Auburn Street access.

Traffic travelling north along Albany Street from the Point Frederick peninsula and heading towards Erina or to Henry Parry Drive turn right unopposed into Duke Street. If that manoeuvre is performed whilst there is a car or cars stopped at the Give-Way sign on the eastern leg of Duke Street, drivers performing the right-turn manoeuvre would have much reduced reaction time to stop if a vehicle was departing or entering a driveway closer to Albany Street. Similarly, drivers turning out of a driveway on Duke Street closer to Albany Street would have their vision of vehicles turning right into Duke Street considerably impaired.

The visibility issue is exacerbated by the northern off-set of the eastern leg of Duke Street at the intersection – see Appendix A.

Summary

In my professional opinion, the location of the Duke Street driveway for the proposed residential development close to the eastern property boundary on Duke Street is the most appropriate location for that driveway on efficiency and safety grounds.

APPENDIX A



(Image Courtesy of Google Earth)

Potential visibility impairment for a driveway closer to Duke Street

Figure 7 – Extract of Traffic Assessment Report

Comment

Council's Traffic Engineer has reviewed the above information and advises;

"I have reviewed Traffic Assessment Report for Residential Development, 8-10 Duke St and 177-181 Albany St, Point Frederick .B J Bradley & Associates. I have also reviewed ADW letter dated 11 August 2017 with attached Bradleys & Assoc letter. Item 2. RE JRPP concerns were held regarding interfaces between this site and neighbouring land.

The panel noted in particular that the impact arising from the proposed driveway immediately adjoining No. 12 Duke Street to the east could be addressed through redesign of the site as well as landscaping.

Bradleys' Response

"The gradients along Duke Street do not enable an access ramp to be constructed to Duke Street at another location without either compromising internal vertical clearances over the internal parking aisles or exceeding the desirable ramp gradients."

"It is desirable that the main vehicular access on Duke Street for the proposed residential development be located as close as possible to the eastern boundary to minimise the volume of traffic along Duke Street as much as practicable and to minimise any potential for drivers entering and departing the basement parking levels to use the Albany Street driveway as a short-cut."

My transport comments

I have reviewed the original traffic study. I agree with B J Bradley & Associates Study prediction that the likely traffic impact of 70% generated traffic would access the development via the Frederick and York Street signalised intersection. This is because all direction (through left and right) traffic movements are possible at the Frederick / York St intersection and only left in left out is permitted at the nearby Albany St York St / intersection.

I also believe the optimum location for a driveway access would be a midblock along Duke Street to maximise available sight lines for the new driveway. The Applicant's preferred location at the most eastern location on their site, which is adjacent to property 12 Duke Street, is in my view the optimum location in terms of safe access.

If the driveway access is moved to the westerly location as sought by JRPP then available sight lines and prevailing safety levels to any traffic and turning through the Albany Street / Duke Street intersection will be reduced accordingly.

I note pedestrians from the site are also likely to be attracted down Auburn Street to the Frederick / York St Signals for access to bus stops."

The movement of the driveway 1.5m away from the boundary with 12 Duke Street, and provision of landscaping and fencing is supported and considered to satisfactorily mitigate the traffic and amenity impacts caused by the driveway to the adjoining site.

3. Better site planning, compliance and reduced impacts would result from movement of Buildings A and B westward; and

Applicants Response

As discussed above, the proponent has amended the plans in accordance with this advice and subsequently moved Building A by 1m and Building B by 1.5m. This results in a 0.5m (4%) noncompliance against the 12m building separation requirement under SEPP 65 between the two (2) buildings. This is considered preferable to complying with the control in order to provide an increased setback of 7.5m from 6m, to No. 12 Duke Street.

Comment

The relocation of Buildings A and B westwards towards Albany Street has permitted an increase of the setback to the eastern boundary from 6m to 7.5m. This is supported and is considered to satisfactorily mitigate the amenity impact on 12 Duke Street.

The reduction from 12m to 11.5m between Buildings A and B results in a reduction of 0.5m or 4.2% to the proposed building separation recommended under the ADG. This is minor and not significant to the amenity impact between Buildings A and B, but will contribute to a significant improvement to the amenity between the proposed development and residents of the adjoining 12 Duke Street. This is considered a reasonable compromise and better planning outcome. One of the aims of building separation under the ADG is to provide suitable areas for communal open spaces, deep soil zones and landscaping. The resultant 11.5m separation still permits the provision of a communal area with landscaping between Buildings A and B. This improves the amenity between the two buildings rather than relying wholly on distance between buildings.

4. Privacy impacts to neighbouring land warranted greater attention to materials, screening and landscaping.

Applicants Response

In addition to the increased setbacks discussed above, planter boxes have been added to upper balconies to increase privacy and soften edges of the building. This is in addition to the existing privacy screens, operable louvers, solid balustrades, deep soil landscaping and columnar screen shrubs planted along the eastern side of the Auburn Street carpark and a palisade privacy screen with climber planting along the eastern side of the Duke Street driveway.

Having regard to the amendments described above, it is considered that the development responds to JRPPs concerns.

Comment

The proposed 7.5m eastern side setback exceeds the minimum required setback of 6m. This permits the provision of landscaping and fencing to mitigate the vehicular noise to the adjoining 12 Duke Street (see figure 8).

The setback area is proposed to be landscaped with a mix of shrubs and groundcovers (see figures 8 and 9). An amended landscape plan has been provided demonstrating that the area between the driveway and the fence is to be densely planted, providing visual softening and shielding.

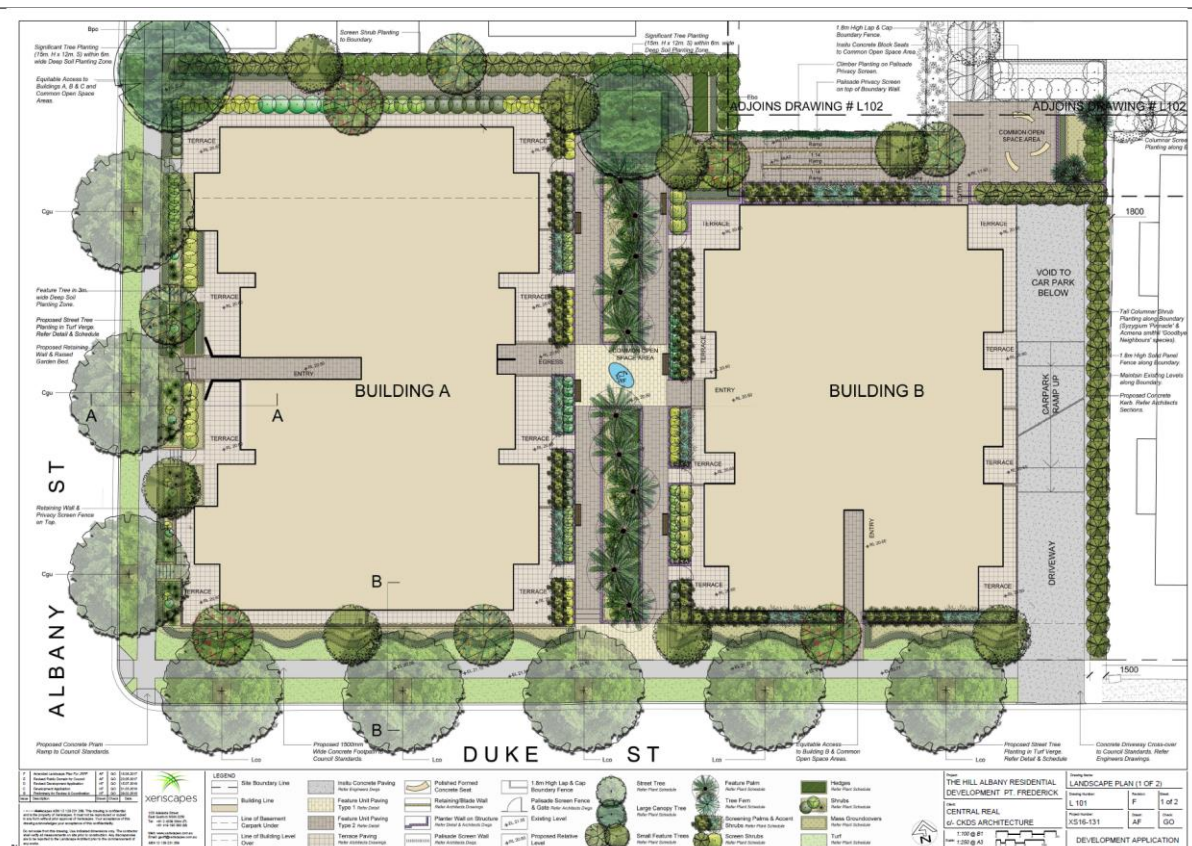


Figure 8 - Amended landscape plan buildings A and B.



Figure 9 - Amended landscape plan building C

The landscape plan proposes a 1.8m high solid fence on the eastern boundary. A condition is also proposed which requires a 750mm solid fence/wall on the eastern side of the proposed driveways to mitigate traffic noise. This will provide for improved visual and acoustic amenity.

The suggested relocation of the Duke Street driveway to the centre of the site frontage has been considered by the applicant's Traffic Engineer and Council's Traffic and Transport Engineer who agree that this would not optimise sight distances and introduces difficulties in basement driveway design due to site levels.

The amended design is supported and is considered to achieve a better planning outcome.

Response to the Panels Terms of Deferral

- 1. Movement of the driveway from Duke Street to the basement to the west, between Buildings A and B, with appropriate details for the associated driveway and landscaping of the courtyard between the buildings, together with landscaped treatment of the eastern setback to No. 12 Duke Street;**

Relocation of the Duke Street driveway from the eastern side of the site to between Buildings A and B is not supported by the applicant or Council.

- The gradients along Duke Street do not enable the construction of an access ramp to the basement car parking area without non-compliance with ramp grades and vertical clearances.
- The location closest to the eastern boundary is more desirable in Duke Street to minimise potential for Albany Street to be used as a short cut, and this location is closest to the signalised intersection of Frederick Street/York Street which is the most likely intersection traffic from the development will use.

Instead, the Panel's recommendation to move Buildings A and B in a westerly direction has been supported. Building B is now set back 7.5m (instead of the previous 6m) from the eastern boundary. This has permitted additional landscaping to be provided between the driveway and the eastern boundary, as shown in the following figure 10.



The applicant has also submitted an acoustic report (Acoustic Logic) which states that the noise of garage door openings will not negatively impact the acoustic amenity of surrounding residential receivers. The Acoustic Report also states;

This letter confirms that an acoustic review of vehicles using the access driveways at The Hill Albany Residential Development has been undertaken. The proposed driveway is not to be used by the commercial/retail tenancies. As such the proposed driveway will be solely used for residential purposes and therefore a noise emission assessment of this activity is not required to be undertaken when applying the EPA Industrial Noise Policy (similar to the way residential use of a backyard or use of a driveway is a domestic residence will rarely strictly comply with EPA guidelines). Additionally, the EPA Environmental Noise Control Manual states in Chapter 116 that noise from motor vehicles is not required to be assessed. As detailed in the relevant table of the Noise Control Manual included in part below which details when classes are required to be applied and it notes that the relevant motor vehicle noise clauses do not apply when entering or leaving a residential property, noted as expected when entering or leaving the premises (residential).

Based on the above and the fact that the driveway will be used for residential use, no assessment of sleep disturbance is required to be undertaken as there will be no 'industrial' use and vehicles will be entering or leaving the premises (refer attachment 5).

To further mitigate the impact of potential traffic noise from the driveway, a 750mm solid wall should be constructed on the eastern side of the driveway, in addition to the 1.8m high solid fence proposed on the eastern boundary in the amended landscape plan (**refer condition 2.10**).

- 2 Buildings A and B should be moved 1.5m westwards, to achieve a minimum eastern side setback to Building B of 7.5m to the edge of balconies on levels 1-4 and 8.5m to the edge of the balcony at Level 5;**

Comment:

Building B has been moved 1.5m westwards and now has a 7.5m setback for Ground level to level 3, and a 9m setback for level 4. This is in accordance with the JRPP Recommendation.

- 3 Revised basement and landscaping plans arising from above;**

Comment:

Amended basement and landscape plans have been submitted (**Drawings L000-L102 in condition 1.1**).

- 4 Revision to the balustrades and consideration of screening/materials along the eastern elevation of Buildings B and C to consider and ameliorate privacy impacts on adjoining land to the east;**

Comment:

The applicant advises the provision of planter boxes on upper levels, and 1.2m high balustrades of opaque/solid material is considered to provide adequate privacy to the east from sitting positions on the balconies.

However privacy screens should be considered where needed to preserve the privacy of the adjoining sites. **(Refer condition 2.10c).**

The setback area is to be planted with a mix of plants comprising shrubs of various species (including Tall Columnar shrubs) as detailed in the landscape plan.

5 Details to ameliorate noise and smell impacts from the driveway to Auburn Street to neighbouring properties to the east;

Comment:

The amended design increases the eastern side setback by 1.5m. The proposed design pushes the Duke Street driveway below natural ground level and proposes a solid wall along the eastern boundary (between building B and the neighbouring residential). This seeks to create a level difference between the basement and ramp area and the private open space areas (see DA-301).

The landscape plan details that the buffer area between the Auburn Street driveway and the eastern boundary will include planting and fencing. The addition of a solid wall on the boundary will minimise vehicle noise to the adjoining property. This driveway falls steeply away from Auburn Street and car exhausts will be below ground/wall level within the street setback area **(refer condition 2.10).**

The impacts of smell/odour impacts from vehicles is considered to be predominantly contained to within the front setback area and away from the private open space of neighbours.

6 Any revisions resulting from the negotiations with No. 6 Auburn Street, if that leads to the property being incorporated into the proposed site area, including consideration to movement of the driveway off the eastern boundary.

Comment:

The owner of 6 Auburn Street has confirmed, in writing, that he has no wish to sell his property. This has been further verified by the owner's daughter. Therefore this site will not be able to be incorporated into the proposed development.

7 Submission of a revised Clause 4.6 Variation Request to reflect the revised plans, if necessary, and a revised BASIX Certificate.

Comment:

A revised clause 4.6 submission (**Attachment 4**) and BASIX Certificate (**refer condition 1.1**) have been submitted and considered.

The maximum height is 15.6m (including the 30% bonus permitted under Clause 8.9 of the GLEP 2014). Part of the proposal exceeds the 15.6m height limit, the encroachments over the height limit are shown coloured grey in Figure 11.

Building A has a height of up to 16m. This is a variation of 0.4m or 2.5%.

Buildings B and C have a height up to 16.8m. This is a variation of 1.2m or 7.7%.

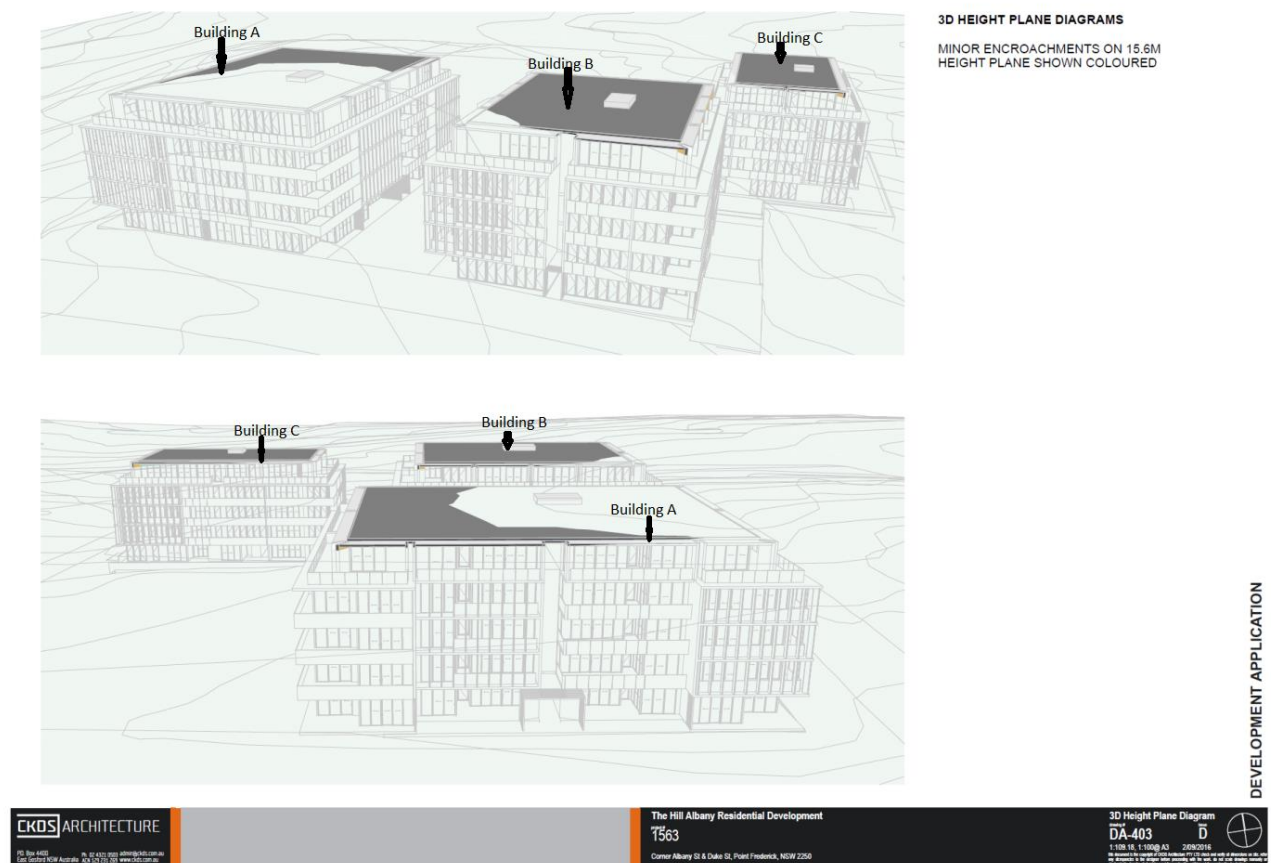


Figure 11 - Variation to 15.6m height plane

The applicant has submitted a submission under clause 4.6 of the GLEP 2014 which contends that adherence to the development standard is unreasonable and unnecessary in this case for the following reasons:

-
- The majority of the development complies with the maximum height limit of 15.6m.
 - The variation is due to the varying topography of the site.
 - The variation is minor and only extends for the upper portions of the roof plane.
 - The variation causes no additional overshadowing of neighbouring properties or view loss.
 - The variation does not increase the visible bulk and scale of the development.

(A copy of the applicants Clause 4.6 submission is included in the attachments).

Clause 4.6 Exception To Development Standards requires consideration of the following:

- 1. Has the applicant submitted a written request that seeks to justify the contravention of the development standard by demonstrating:**
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and**
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard?**

Comment

The applicant's written request has adequately justified that compliance with the development standard is unreasonable and unnecessary in this instance and there are sufficient environmental planning grounds to justify the variation of the development standard.

The subject land has varying slope through and across the site. The proposed variation is of a minor nature, and is considered reasonable given the slope of the site and the difficulty in fully complying with height limits on a sloping site. Additionally, the proposal complies with the allowed FSR and the additional height does not result in additional overshadowing impacts to neighbouring land.

- 2. Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?**

Comment

The development, with the additional height, will not have unreasonable impacts on the neighbouring residents. The proposal is considered consistent with the desired future character of the area and is consistent with the objectives of the R1 General Residential Zone. The extent of the variations (being 2.5% and 7.7%) are considered acceptable given the site constraints and noting that the development complies with the allowable FSR.

Further, the additional height is located away from the southern edge of the buildings, minimising shadow impacts. The additional height will also not generate additional overshadowing of public open spaces.

3. Has the concurrence of the Director-General has been obtained?

Comment

Under Planning Circular PS 08-033 issued 9 May 2008 Council may assume the concurrence of the Director-General when considering exceptions to development standards under clause 4.6. Council is therefore able to approve the variation.

This assessment has been carried out having regard to the relevant principles identified in the following case law:

- *Wehbe v Pittwater Council [2007] NSWLEC 827*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248*

The Clause 4.6 request submitted by the applicant appropriately addresses the relevant principles and exhibits consistency with the relevant objectives under GLEP 2014.

The development is considered to be in line with the relevant objectives. The request for a variation to the height control under Clause 4.6 is considered to be well founded and is recommended for support.

Planning Comment

The amended plans result in the following changes and impacts;

Setbacks

Relocation of Building A 1m westward results in the setback to Albany Street being reduced from 3m to 2m. This is a 1m or 33% variation to the setback required under GDCP 2013. However the building on the Albany Street frontage is well articulated and the reduction in setback is compensated for by the average setback being greater than 2m, and the reduction in impact on 12 Duke Street.

The reduction in separation between buildings A and B from 12m to 11.5m, although 0.5m (4%) non-compliant with SEPP65 and the ADG, is not considered significant. It enables building B to be relocated 1.5m further away from the boundary with 12 Duke Street, to achieve a total side setback of 7.5m. This enables additional fencing and landscaping treatment between the driveway and the eastern boundary to screen and to mitigate the driveway noise impact on 12 Duke Street to a reasonable level.

Shadow Impact

The applicant has submitted one hourly shadow diagrams for the amended plans which compares the shadow impact for the proposal at building heights of 12m and 15.6m on the adjoining property (12 Duke Street). It is noted that the height limit for the proposed development is 15.6m with the 30% height bonus applicable under clause 8.9 of the GLEP 2014.

The shadow diagrams indicate that in March, the western courtyards at 12 Duke Street will be affected by shadow from the proposed building from about 2.30pm onwards. However the building at 12 Duke Street overshadows their own courtyards up to about 11.00am. This results in the adjoining courtyards receiving about 3.5 hours sunlight in March.

In June, the proposal overshadows the adjoining courtyards from about 2pm onwards. However the courtyards are overshadowed by their own building up to about 11.00am. This results in the adjoining courtyards receiving about 2-3 hours sunlight in the winter time. This is not unreasonable given the higher density housing forms promoted in this locality.

It is noted that the height non- compliance does not result in any additional over shadowing of this property (compared to the permissible height).

Car Parking

The relocation of the driveway results in a loss of three car parking spaces. A total of 150 spaces are required under GDCP 2013 for this development, and 147 spaces are now proposed. This results in a deficiency of 3 spaces or 2%. This is considered a minor variation, not significant, and is supported. The site is noted to be in walking distance of regular bus services via the bus stop located on the Central Coast Highway. Such a variation is also justified due to the size of the development and the benefit to 12 Duke Street in relocation of the driveway.

Conclusion

The applicant has taken into consideration and responded to JRPP reasons for deferral. In response amended plans have been provided to refine the design and minimise impacts.

The applicant has chosen to address concerns raised with the impact of the development at 12 Duke Street by moving the driveway 1.5m away from the side boundary and providing noise attenuation/landscaping along the side boundary.

The Building B setback to the eastern boundary was increased from 6m to 7.5m, providing greater separation between the proposed building and driveway and the adjoining development at 12 Duke Street. This reduces the impact on the adjoining development and permits additional noise attenuation measures and landscaping to be provided. The resultant impact on 12 Duke Street is not significant and is considered reasonable.

The proposed amended development generally complies with the GLEP 2014 and GDCP 2013 except for the maximum building height, maximum floor plate and side/rear setbacks. However, the variations are minor or have no significant additional impacts on adjoining properties.

The issues raised in public submissions are addressed by the amended plans or do not justify refusal of the proposal. The contention raised in submissions, that the road system cannot cater for the traffic generated by this and other developments in the area is not supported by the traffic report and comments from the RMS.

The impact of overlooking of the adjoining properties can be addressed by the provision of planter boxes and/or privacy screens. At ground level, there is significant landscaping along the boundaries to protect privacy and amenity.

This application has been assessed under the heads of consideration of section 79C of the *Environmental Planning and Assessment Act 1979* and all relevant instruments and policies. The potential constraints of the site have been assessed and it is considered that the site is suitable for the proposed development.

Subject to the imposition of appropriate conditions, the proposed development is not expected to have any adverse social or economic impact. It is considered that the proposed development will complement the locality and meet the desired future character of the area. The development site is in an area nominated to grow in population and density into the future.

Accordingly, the application is recommended for approval pursuant to Section 80 of the *Environmental Planning and Assessment Act*.

Plans for Stamping:

Amended Plans ECM Doc No. 24955669, Sheets DA-703 to DA- 706 DN 24772469.

Supporting Documents for Binding with consent:

BASIX Certificate Number 705977M_03, (ECM Doc No 24955707)

Waste Management Plan (ECM Doc No 23235814)

SEPP 65 Compliance Statement and Apartment Design Guide Report DN 24207719

Landscape Plans ECM Doc No 24891476

Original report

Clause 4.6