

TO: Sydney West Central Planning Panel

REPORT: SWCPP Report

SUBJECT: 32-40 Kerr Parade, AUBURN NSW 2144 - DA-415/2014

FILE No: DA-415/2014/B

Application lodged	24-October-2016
Applicant	Zhinar Architects
Owner	Mr R Oueik
Application No.	DA-415/2014/B
Description of Land	Lot 19 DP 3854, Lots 1 & 2 DP 505106, Lot 14 DP 56637, 32-40 Kerr Parade, AUBURN NSW 2144
Proposed Development	Section 96(2) Modification to covert the approved roof top terrace into a four (4) bedroom penthouse apartment and relocate the communal open space to ground floor level.
Site Area	2,457.88m ²
Zoning	Zone B4 - Mixed Use
Disclosure of political donations and gifts	Nil disclosure
Heritage	No
Issues	Addition of a penthouse apartment. Relocation and minor reduction in area of the communal open space. Minor increase in FSR above the statutory maximum. Independent Planning Assessment – suspended Councillor.

SUMMARY

1. In April 2014 consent was granted (DA-406/2013) for the construction of a 7 storey residential flat building over 3 levels of basement parking at 32-40 Kerr Parade, Auburn.
2. In March 2015 consent was granted (DA-415/2014) for alterations and additions to the approved development to allow an additional 5 storeys and 2 basement levels.
3. In August 2015 consent was granted (DA-415/2014/A) to modify the approved development to provide an additional level of basement parking.
4. Construction of the development has commenced and is progressing, however the construction of the upper levels of the development has not yet commenced.
5. The application is recommended for approval.

LOCALITY PLAN



The subject land is shown in red outline.

REPORT

Introduction

Subject Site and surrounding area

The subject site is identified as Lot 19 DP 3854, Pt Lot 19 DP 3854, Lot 1 DP 505016, Lot 2 DP 505016, Lot 14 DP 56637, 32 - 40 Kerr Parade, AUBURN.

The site is located on the north western side of Kerr Parade, between the intersections with Civic Road to the north-west and Marion Street to the south east. The site is generally rectangular and has a site area of approximately 2,457.88sqm. The site has a street frontage of approximately 48.87m to Kerr Parade and the north-western and south-eastern (side) boundaries are 50.29 m in length.

To the north-western side of the site is the carpark that serves the GIMA supermarket that fronts Queen Street. The rear of the site is bounded by a mix of commercial buildings (including the supermarket) and St Andrews church which front Queen Street. To the south-east is a 3 storey residential flat building. On the opposite side of Kerr Parade is the railway line. The site is located within the high density residential and commercial area of Auburn, approximately 300m from the Auburn railway station and the Auburn commercial centre.

The site is identified on the aerial photo below.

AERIAL PHOTO



Description of the proposed modification

Council has received an application under Section 96(2) seeking to modify the consent to DA415/2014 granted on 5 March 2015, to allow the conversion of the rooftop communal open space terrace into a four (4) bedroom penthouse apartment.

The proposed modification does not necessitate any additional height to the building and is accommodated in the existing height limit. There is also no change to the building footprint in terms of setbacks. However, the modification does seek to increase the approved floor space ratio by an additional 490.56m², such that it will exceed the statutory maximum 5:1 floor space ratio for the site prescribed under Clause 4.4 of Auburn Local Environmental Plan 2010 by 474.12m². This equates to a floor space ratio of 5.18:1, representing a 3.8% variation to the statutory maximum.

The development as originally approved provides 490.56m² of communal open space on the roof top terrace and an additional 217.05m² at ground floor level. This equates to a total of 707.61m² of communal open space, representing 29% of the site area. It is noted that this satisfies the requirement for communal open space that equates to a minimum of 25% of the site area under the Apartment Design Guide (ADG). The proposed modification sought to relocate all of the communal open space to the ground floor, with a minor reduction in area (25.11m²), such that 682.5m² of communal open space would be provided at ground level, representing 27.7% of the site area. This would still achieve compliance with the required minimum of 25% of the site area under the ADG.

However, the relocation of the communal open space from the roof terrace meant that the size of the private courtyards/terraces for a number of the ground floor apartments would be reduced and the relationship between the communal open space and the

adjacent apartments was considered to be poor. In addition, the relocation of the communal open space meant that the communal open space would not achieve the required 2 hours of sunlight to a minimum of 50% of a useable part of the communal open space between 9am and 3pm in mid-winter.

These issues were discussed with the applicant and amended plans have been submitted to address the concerns. The ground floor plan now remains the same as originally approved and the rooftop private open space for the new penthouse apartment has been reduced and 436.73m² allocated as communal open space. When combined with the 217.05m² approved at ground level under the original application, a total of 653.78m² (26.6% of the site area) of communal open space is provided.

History

On 24 April 2014 consent was granted to DA-406/2013 for demolition of the existing dwellings and construction of a 7 storey residential flat building comprising 94 units over 3 levels of basement parking for 114 vehicles, landscaping & civil works at Nos. 32-40 Kerr Parade, Auburn.

In December 2014 this consent was modified under Section 96(1A) to allow for payment of S94 contributions prior to the issue of the Occupation Certificate, rather than prior to the issue of the Construction Certificate, as is the usual practice.

On 5 March 2015 consent was granted to DA-415/2014 for alterations and additions to the approved residential flat development (under DA-406/2013) for 5 additional storeys comprising 63 units and 2 additional basement levels, as well as associated modifications to the previously approved floor levels. The overall apartment yield increased from 94 to 157 apartments.

In August 2015 consent was granted (DA-415/2014/A) to modify the approved development to provide an additional level of basement parking.

As such, the current approved development comprises an 11 storey residential flat building containing 157 apartments over 5 levels of basement parking accommodating 403 cars

Applicants Supporting Statement

The applicant has provided a Statement of Environmental Effects prepared by Hawes and Swan Planning Pty Ltd, dated 20 October 2016 and received by Council on 24 October 2016 in support of the application.

Contact with relevant parties

The assessing officer has undertaken a site inspection of the subject site and surrounding properties. Contact with the applicant during the assessment process was not necessary.

Internal Referrals

No internal referrals were required.

External Referrals

No external referrals were required.

Planning Comments

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

Section 96(1A) of the Environmental Planning and Assessment Act 1979 allows Council to modify a development consent if:-

- (a) it is satisfied that the development for 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)*

The modification being sought would result in substantially the same development as that already approved. Accordingly, the modification is considered acceptable in respect of Section 96(1A) of the Act.

- (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*

The application was referred to the Sydney Trains as required under Clause 86 of SEPP (Infrastructure) 2007 relating to development involving excavation adjacent to rail corridors. Sydney Trains responded by letter on 24 January 2017 indicating no objections to the proposed development.

- (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.*

- (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.*

In accordance with Council's Development Control Plan, the proposal was publicly exhibited for a period of 14 days during November 2016. No submissions were received.

Other Considerations

In determining an application for modification of consent, Council must also take into consideration relevant matters referred to in Section 79C(1). These matters have been considered in the assessment of the Section 96(2) Application. Following is a discussion of matters arising in relation to section 79C(1) relevant to the proposed modification.

The provisions of any Environmental Planning Instruments (EP& A Act s79C(1)(a)(i))

State Environmental Planning Policies

The proposed development is affected by the following State Environmental Planning Policies:

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

An Amended BASIX Certificate (No. 520602M_05) has been submitted with the modification application to reflect the modified apartment yield (from 157 to 158 apartments) and to demonstrate that the proposed additional penthouse apartment meets the required water, thermal comfort and energy targets.

(b) State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development & the Apartment Design Guide (ADG)

The Apartment Design Guide (ADG) specifies that residential apartment development is to provide a communal open space area equivalent to at least 25% of the site area. In addition, development must achieve a minimum of 50% direct sunlight to the principal useable part of the communal open space for a minimum of 2 hours between 9am and 3pm in mid-winter.

The development as originally approved provided a principal area of 490.56m² of communal open space on the roof top terrace and an additional 217.05m² at ground floor level. This equated to a total of 707.61m² of communal open space, representing 29% of the site area. This satisfied the Apartment Design Guide (ADG) requirement that a minimum of 25% of the site area be allocated as communal open space.

When initially lodged, the proposed modification sought to relocate all of the communal open space to the ground floor, with a minor reduction in area (25.11m²), such that 682.5m² of communal open space would be provided. This represented 27.7% of the site area and therefore, still achieved the required minimum of 25% of the site area under the ADG.

The location of the principal area of communal open space on the roof top terrace, as approved under the original application, provided a useable area for residents that did not interface directly with any of the residential apartments. However, the proposal to relocate of all of the communal open space to the ground floor level resulted in a reduction in the private open space areas for 4 of the ground floor apartments. Notwithstanding, with the exception of 1 apartment, the affected apartments still

achieved the minimum area for private open space required under the ADG. However, this also meant that the communal open space directly interfaced with 7 of the 11 ground floor apartments, with windows to the bedrooms and the private open space of these apartments being directly adjacent to the communal open space. Under the current approved scheme, only 3 of the ground floor apartments have a direct interface with the secondary area of communal open space at ground level on the south-western side of the building. In addition, the only privacy provided between the communal open space and the private open space and bedroom windows of the affected apartments would be a planter box.

The amended Landscape Plan submitted with the application provided details of the planter boxes, indicating that they would be 700mm high and of variable width (approx. 600mm-700mm wide). The Landscape Plan indicates that these planter boxes would be densely planted with a combination of trees, feature shrubs and low shrubs/ground covers, and although this may achieve an appropriate degree of visual privacy, the relationship between the communal open space and the adjacent apartments was considered to be poor. While this same relationship exists in the current approved scheme between 3 of the ground floor apartments and the secondary area of communal open space, this is not appropriate where the relationship will be between the affected apartments and the principal area of communal open space.

The design guidance provided in Section 4H in Part 4 of the ADG in relation to acoustic privacy notes that active communal open space areas and circulation areas should be located at least 3m away from bedrooms. However, as indicated on the ground floor plan for the proposed modification, the communal open space/circulation areas would be located either directly adjacent to, or only 600mm-700mm (the width of the planter boxes) away from nine (9) bedrooms in the seven (7) apartments that would have a direct interface with the communal open space. It is considered that the reduced amenity for these affected apartments, not only as a consequence of the reduced private open space areas, but more importantly the proximity of the communal open space to the apartments, would not be an appropriate design outcome.

In relation to solar access, as noted above, development must achieve a minimum of 50% direct sunlight to the principal useable part of the communal open space for a minimum of 2 hours between 9am and 3pm in mid-winter.

As the building height and footprint is not being changed under the proposed modifications, the extent of shadows will be the same as per the approved development. The mid-winter shadow diagrams indicate that a large proportion of the communal open space at ground level will be in shadow for the majority of the day during mid-winter, such that less than 50% of the communal open space area (as proposed to be relocated) would receive the required 2 hours of solar access between 9am and 3pm in mid-winter. As such, this is inconsistent with the ADG requirement.

As discussed earlier, the above issues were raised with the applicant and the modification plans have subsequently been amended to retain the principal area of communal open space at the rooftop.

In order to accommodate the new penthouse apartment, the proposed modification now seeks to relocate the rooftop communal open space, with a minor reduction in area (53.83m²) to the north-eastern end of the rooftop, such that a total of 653.78m² of

communal open space will be provided. This represents 26.6% of the site area and therefore, still achieves the required minimum of 25% of the site area under the ADG.

As such, there is no longer any proposed modifications to the ground floor plan. This eliminates the concerns around visual and acoustic privacy and ensures that the principal communal open space receives well in excess of 2 hours direct sunlight between 9am and 3pm in mid-winter.

Regional Environmental Plans

The proposed development is not specifically affected by any relevant Regional Environmental Plans.

Local Environmental Plans

Auburn Local Environmental Plan 2010

The subject site is zoned B4 Mixed Use under the provisions of Auburn Local Environmental Plan 2010 (ALEP 2010). The Land Use Table for the B4 zone contained in Part 2 of the LEP sets out the zoning objectives, as well as specifying development/land uses that may be carried out without development consent, only with development and development that is prohibited. Residential flat buildings are listed as permissible with consent in the B4 Mixed Use zone.

The objectives for the B4 Mixed Use zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To encourage high density residential development.*
- *To encourage appropriate businesses that contribute to economic growth.*
- *To achieve an accessible, attractive and safe public domain.*

The development, as proposed to be modified, remains consistent with the zoning objectives, providing additional residential accommodation in a high density residential environment, in proximity to the shops and services available in the Auburn Town Centre and in proximity to public transport options.

The proposed modification does not seek an increase to the height of the building and is accommodated within the 38m statutory height limit prescribed under clause 4.3 of the LEP.

The modification seeks to increase the approved gross floor area by an additional 490.56m², such that it will exceed the statutory maximum 5:1 floor space ratio for the site prescribed under Clause 4.4 of the LEP by 474.12m². This equates to a floor space

ratio of 5.18:1, representing a 3.8% variation to the statutory maximum. However, the additional floor space is considered to be acceptable in this instance, as it will not translate to an increase in the bulk or scale of the development. The penthouse apartment will essentially occupy the footprint of the awning roof that covers the majority of the roof top terrace under the approved scheme.

As noted in the applicant's Statement of Environmental Effects, a Clause 4.6 Exceptions to Development Standards request is not required with respect to a Section 96(2) Modification application.

The provisions of any Draft Environmental Planning Instruments (EP& A Act s79C(1)(a)(ii))

The development, as proposed to be modified, is not affected by any relevant Draft Environmental Planning Instruments.

The provisions of any Development Control Plans (EP& A Act s79C(1)(a)(iii))

Auburn Development Control Plan 2010 came into force commensurate with the gazettal of Auburn LEP 2010 and provides more detailed controls for various types of development to support the provisions of the LEP.

The proposed penthouse apartment has been assessed against the relevant DCP provisions with respect to residential flat buildings and is consistent with these controls. The penthouse apartment well exceeds the minimum required area for a 4 bedroom apartment and meets the requirements in relation to private open space, floor to ceiling height, storage and car parking. Although the penthouse apartment generates a demand for 2 parking spaces, no additional parking is required as the approved development provides on-site parking in excess of the DCP minimum requirement. Based on the DCP rates, a minimum parking provision of 204 spaces and maximum of 533 spaces is required for the proposed yield of 158 apartments. The approved development provides 403 on-site parking spaces and this is considered sufficient to accommodate the parking requirement of the additional apartment.

79C(1)(a)(iiia) - any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

There is no draft planning agreement associated with the subject Modification Application.

The provisions of the Regulations (EP& A Act s79C(1)(a)(iv))

The development, as proposed to be modified, raises no concerns as to the relevant matters arising from the EP& A Regulations 2000.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Auburn area.

The Likely Environmental, Social or Economic Impacts (EP& A Act s79C(1)(b))

It is considered that the development, as proposed to be modified, will have no significant adverse environmental, social or economic impacts in the locality.

The suitability of the site for the development (EP&A Act s79C(1)(c))

The subject site and locality is not known to be affected by any natural hazards or other site constraints likely to have a significant adverse impact on the proposed development. Accordingly, the site is suitable to accommodate the development.

Submissions made in accordance with the Act or Regulation (EP&A Act s79C(1)(d))

In accordance with Council's Development Control Plan, the proposal was publicly exhibited for a period of fourteen days during November 2016. No submissions were received in respect of the proposed modification.

The public interest (EP& A Act s79C(1)(e))

The public interest is served by permitting the orderly and economic development of land, in a manner that is sensitive to the surrounding environment and has regard to the reasonable amenity expectations of future residents and surrounding land users. In view of the foregoing analysis it is considered that the development, as proposed to be modified, is not in the public interest as it will result in an unreasonable reduction in amenity for residents of the development, in particular, those residents whose apartments will directly adjoin the communal open space. While the addition of the penthouse apartment is appropriate in its own right, when balanced against the loss of amenity resulting from the relocation of the principal communal open space area, it is considered to be contrary to the public interest.

Auburn City Council Operational Plan / Delivery Program

This assessment and report relates to the Auburn City Council Operational Plan and Delivery Program, Our Places – Attractive and Liveable theme, action "2a.1.1.3 Assess development applications, complying development and construction certificates".

Disclosure of Political Donations and Gifts

The NSW Government introduced The Local Government and Planning Legislation Amendment (Political Donations) Act 2008 (NSW). This disclosure requirement is for all members of the public relating to political donations and gifts. The law introduces disclosure requirements for individuals or entities with a relevant financial interest as part of the lodgement of various types of development proposals and requests to initiate environmental planning instruments or development control plans.

The applicant and notification process did not result in any disclosure of Political Donations and Gifts.

Conclusion

The Section 96(2) Modification application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*, *Auburn Local Environmental Plan 2010* and *Auburn Development Control Plan 2010*. It is considered that the proposed modifications are satisfactory. Accordingly, it is recommended that the application to modify DA-415/2014 be approved.

RECOMMENDATION

That the Section 96(2) Application seeking to modify DA-415/2014 by the conversion of an approved roof top terrace into a 4-bedroom penthouse and relocation of the principal area of communal open space at 32-40 Kerr Parade, Auburn, be approved and the consent modified as follows:

By Amending Condition No.1 to read as follows:

A: Amend Conditions 1 and 73 to read as follows:

Approved Plans

1. The development is to be carried out in accordance with the approved stamped plans as numbered below:

<i>Plan Number</i>	<i>Prepared By</i>	<i>Revision No.</i>	<i>Dated</i>
Cover Page 8348 S96 – F:00	Zhinar Architects	F	6/12/2016
Site Analysis DA-C:01	Zhinar Architects	C	2/12/2014
Basement 6 Plan S96-D:02.1	Zhinar Architects	S96-D	3/8/2015
Basement 5 Plan S96-D:02.2	Zhinar Architects	S96-D	3/8/2015
Basement 4 Plan S96-D:03	Zhinar Architects	S96-D	3/8/2015
Basement 3 Plan S96-D:04	Zhinar Architects	S96-D	3/8/2015
Basement 2 Plan S96-D:05	Zhinar Architects	S96-D	3/8/2015
Basement 1 Plan S96-D:1:06	Zhinar Architects	S96-D	3/8/2015

SYDNEY WEST JOINT REGIONAL PLANNING PANEL

Site Plan DA-C:07.1	Zhinar Architects	C	2/12/2014
Ground Floor S96-D.1:07.2	Zhinar Architects	S96-D	3/8/2015
Level 1 Plan DA-C:08	Zhinar Architects	C	2/12/2014
Level 2 Plan DA-C:09	Zhinar Architects	C	2/12/2014
Level 5-7 Plan DA-C:10	Zhinar Architects	C	2/12/2014
Level 8 Plan DA-C:11	Zhinar Architects	C	2/12/2014
Level 9 Plan DA-C:12	Zhinar Architects	C	2/12/2014
Level 10 Plan DA-C:13	Zhinar Architects	C	2/12/2014
Level 11 Plan DA-C:14	Zhinar Architects	C	2/12/2014
Penthouse Level 8348 S96 – F:15	Zhinar Architects	F	6/12/2016
Top Roof Plan DA-C:16	Zhinar Architects	F	6/12/2016
North Elevation 8348 S96 – F:17	Zhinar Architects	F	6/12/2016
South Elevation 8348 S96 – F:18	Zhinar Architects	F	6/12/2016
East Elevation 8348 S96 – F:18	Zhinar Architects	F	6/12/2016
West Elevation 8348 S96 – F:18	Zhinar Architects	F	6/12/2016
Section A 8348 S96 – F:18	Zhinar Architects	F	6/12/2016
Section B 8348 S96 – F:18	Zhinar Architects	F	6/12/2016
Material Schedule 02 DA-C:29 (2 Sheets)	Zhinar Architects	C	2/12/2014
BASIX Certificate Certificate Number 520602M-02			25 November 2014
Landscape Concept Plan Drawing Number 13182DA1	Vision Dynamics		8/9/2014
Qualitative Wind Impact Assessment Report Report Number 610.14734-R1	SLR Global Environmental Solutions	0	28 November 2014

Stormwater Layout Plan. Basement Level 5 and Pump Out Tank Details. Drawing Number 1719-DA SW001	HKMA Engineers	E	24/11/2014
Stormwater Layout Plan. Ground Level and Notes. Drawing Number 1719-DA SW002	HKMA Engineers	E	24/11/2014
Stormwater Layout Plan. Roof Terrace Level. OSD Tank Plan and Section. Drawing Number 1719-DA SW003	HKMA Engineers	D	8/9/2014

except as otherwise provided by the conditions of this determination (Note:- modifications to the approved plans will require the lodgement and consideration by Council of a modification pursuant to Section 96 of the Environmental Planning and Assessment Act).

Reason:- to confirm and clarify the terms of Council's approval.