

COUNCIL ASSESSMENT REPORT

Panel Reference	2016SYE086
DA Number	201500081.02
LGA	Inner West
Proposed Development	To carry out reconfigurations internally within Building A and B, modify window openings, provision of stair access for maintenance to roof of Building A and minor housekeeping amendments to existing conditions
Street Address	801-807 New Canterbury Road, Dulwich Hill
Applicant/Owner	Haralambis Constructions Pty Ltd
Number of Submissions	None
Regional Development Criteria (Schedule 4A of the Act)	Section 96(2) to an application with CIV >\$20m
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (Amendment 3) • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (State and Regional Development) 2011 • Marrickville Local Environmental Plan 2011 • Marrickville Development Control Plan 2011
Is a Clause 4.6 variation request required?	No as it is a Section 96 application
Does the DA require Special Infrastructure Contributions conditions (S94EF)?	No
Have draft conditions been provided to the applicant for comment? Have any comments been considered by council in the assessment report?	No
List all documents submitted with this report for the Panel's consideration	Architectural Plans Statement of Environmental Effects
Recommendation	Approval
Report prepared by	Daniel East – Team Leader Development Assessment
Report date	16 November 2016

File Ref: DA201500081.02

Synopsis

This report concerns an application under Section 96 of the Environmental Planning and Assessment Act to modify modified Determination No. 201500081, dated 19 May 2016, to carry out reconfigurations internally within Building A and B, modify window openings, provision of stair access for maintenance to roof of Building A and minor housekeeping amendments to existing conditions. The application was notified in accordance with Council's Notification Policy and no submissions were received. The application is suitable for approval subject to the imposition of appropriate conditions.

PART A - PARTICULARS

Location: Northern side of New Canterbury Road, between Ross Street and Old Canterbury Road, Dulwich Hill.



Image 1: Location Map

D/A No: 201500081.02

Application Date: 4 August 2016

Proposal: To carry out reconfigurations internally within Building A and B, modify window openings, provision of stair access for maintenance to roof of Building A and minor housekeeping amendments to existing conditions.

Applicant: Haralambis Constructions Pty Ltd

Zoning: B2 - Local Centre

PART B - THE SITE AND ITS ENVIRONMENT

- Improvements:** Construction site
- Current Use:** Currently under construction for mixed use development approved under Determination No. 201500081.
- Prior Determinations:** Determination No. 201500081, dated 28 October 2015, approved an application to demolish the existing improvements and construct a 4 storey development consisting of a residential flat building (Building A) containing 37 dwellings and a mixed use building (Building B) containing 3 retail tenancies and 30 dwellings with 2 levels of basement car parking accommodating 108 car parking spaces. This determination was modified on 19 May 2016 to allow an additional (5th) storey.
- Environment:** Mixed use development along New Canterbury Road, with residential uses in Cobar Street and Ross Street.

PART C - REQUIREMENTS

1. **Zoning**
Is the proposal permissible under zoning provisions? Yes
2. **Development Standards (Statutory Requirements):**

Type	Required	Proposed
Height of Building (max)	14 metres	17.82 metres
Floor Space Ratio (max)	1.75:1	2.313:1
3. **Departures from Development Control Plan:**
Nil
4. **Community Consultation:**
 Required: Yes (newspaper advertisement, on-site notice and resident notification)
 Submissions: No
5. **Other Requirements:**
 State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (Amendment 3)
 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
 State Environmental Planning Policy (State and Regional Development) 2011
 ANEF 2033 Affectation (below 20 ANEF)
 Marrickville Section 94/94A Contributions Plan 2014

PART D - ASSESSMENT

1. Background

Approval was granted by Determination No. 201500081, dated 28 October 2015, to demolish the existing improvements and construct a 4 storey development consisting of a residential flat building (Building A) containing 37 dwellings and a mixed use building (Building B) containing 3 retail tenancies and 30 dwellings with 2 levels of basement car parking accommodating 108 car parking spaces on the above property.

A Section 96(2) application approved on 19 May 2016 permitted the following modifications to the original approval:

- Addition of one level to Building A and Building B resulting in both buildings being 5 storeys (the additional storeys contained a total of 10 dwellings);
- Reconfiguration of Basement Level 1 and Basement Level 2 including the addition of 7 cars spaces (resulting in a total of 115 car spaces);
- Inclusion of an additional retail lift within Building B;
- Amendments to the location and type of the proposed adaptable units;
- Inclusion of combined storage / service cage enclosures to balconies addressing New Canterbury Road;
- Extension to the north of private open space for ground level units in Building A;
- Adjustment to the building envelope and internal reconfiguration of the south east corner of Building A;
- Reconfiguration of Unit A3.09;
- Increase in finished floor level of the eastern portion of Building B by 200mm to accommodate a new substation.

2. The Proposal

On 4 August 2016, a modification application was submitted to the Council. The modified application seeks approval to include:

- Reconfiguration of apartment A4.02 including deletion of the south facing bedroom terrace and minor increase to the internal living and dining area;
- Reconfiguration of apartment 4.04 including a minor increase to the internal living and dining area;
- Reduction in the length of the common internal corridor at the western end of Level 4 of Building B;
- Reconfiguration of apartment B4.01 as a result of reducing the length of the common internal corridor including relocation of laundry, minor increase in the floor area of the unit (4sqm) and conversion from a 2 bedroom to a 3 bedroom apartment;
- 400mm increase to the depth of the rear (north facing) awning to the western component of Building A at roof level;
- Extension of the southern awning to the external wall alignment of Level 4 of the eastern component of Building A;
- Provision of stair access for maintenance to the roof of the western element of Building A;
- Increase in the size of terrace to the apartment A3.09 by repositioning the privacy screen;
- Minor change to the angle of the western wall of the southernmost bedroom in apartment type “.01” in Building B and consequential increase of 1sqm in floor area to each apartment;
- Reconfiguration of internal layout to apartment 4.03 and conversion from a 1 bedroom apartment to a 2 bedroom apartment
- Housekeeping amendments to conditions:
 - Amend an error in condition 1 to include the approved Level 4 floor plan;
 - Amend condition 4 to reflect the final comprehensive materials and finishes;
 - Amend condition 8 to delete the words ‘from the dedicated loading space at the rear of the site’ as no such space exists;
 - To delete condition 63 relating to minimum insulation and R rating as it was placed on the consent inadvertently;
 - To amend condition 70(e) to correct the number of accessible car spaces from 20 to 19 to be consistent with condition 11;

- To amend condition 120 with respect to the reference to steel poles noting that the replacement electrical poles at either end of the site will be timber (not steel) and only the one new light pole fronting the site will be a steel pole.

The proposal results in a 21sqm increase in the GFA from 7,081sqm to 7,102sqm which increases the FSR from 2.306:1 to 2.313:1.

3. Planning Assessment

(i) State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development

SEPP 65 (Amendment 3) prescribes 9 design quality principles to guide the design residential flat buildings and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and architectural expression. The amended proposal is considered to be consistent with the design quality principles set out in the SEPP 65 (Amendment 3).

Apartment size

The plans originally submitted with this Section 96 application proposed to convert B4.01 from a 2 bedroom apartment to a 3 bedroom apartment. Council's Architectural Excellence Panel (AEP) advised that *"an 85sqm apartment accommodating three bedrooms with two bathrooms is too small and is contrary to the minimum recommendations for apartment size in the ADG (page 89). B4.01 should be reconfigured as a 2 bed or 2 bed + study apartment, enabling the size of the living area and private open space (minimum of 10sqm) to be increased."* Amended plans were submitted by the applicant to address these issues to the satisfaction of AEP.

The majority of the other modifications to the apartments are minor in nature and improve the internal layouts and are supported in accordance with the design requirements under SEPP 65.

(ii) State Environmental Planning Policy (State and Regional Development) 2011

The original development has a capital investment value of \$24,564,732.

Clause 3 in Schedule 4A of the Environmental Planning & Assessment Act 1979 (EP&A Act 1979) provides that a Section 96(2) application determined by the relevant Joint Regional Planning Panel, pursuant to the provisions of Section 23G (4) and Clause 21 of State Environmental Planning Policy (State and Regional Development) 2011 remains a matter for the JRPP to determine as the consent authority given that the original figure was greater than \$20 million.

Despite the changes being relatively minor, Council considers the application to be a Section 96(2) given the proposed changes increase existing departures from the applicable development standards. It is noted that in accepted case law, the provisions of Clause 4.6 do not apply to modifications to development consent.

(iii) Height of Building (HOB)

The proposed development seeks to vary the building height development standard as prescribed under Clause 4.3 of MLEP 2011, as follows:

Clause 4.3 (MLEP 2011)	Permitted	Approved	Proposed	Increase in this S96
Height of Building (max) – Building A	14 metres	16.5 metres (2.5 metre departure or 17.8%)	17.82 metres (3.82 metre departure or 27.2%)	1.32 metres

The only change to building height in this application relates to the provision of roof access stair to the eastern side of Building A. It is noted that no change is proposed to the highest part (and largest building height non-compliance of the approved development) which is the lift overrun of Building B. The proposed development seeks to vary the maximum height of building development standard on the Building A portion of the development as prescribed under Clause 4.3 of MLEP 2011. The approved plans indicated the maximum building height of the lift overrun and access stair of Building A at 16.5 metres. During the detailed construction drawing phase, the applicant advises that the roof access stair was required to have a maximum height of 17.82 metres, an increase of 1.32 metres resulting in a total departure of 27.2%. The proposed height variation is considered to be acceptable given that there will be negligible views of it from the public domain and will not result in any amenity impacts for adjoining residents.

(iv) Floor Space Ratio (FSR)

The proposed development seeks to vary the floor space ratio development standard as prescribed under Clause 4.4 of MLEP 2011, as follows:

Clause 4.4 (MLEP 2011)	Permitted	Approved	Proposed	Increase in this S96
Floor Space Ratio (max)	1.75:1	2.306:1	2.313:1	0.007:1
Gross Floor Area	5,372m ²	7,081m ² (1,709 m ² departure or 31.8%)	7,102 m ² (1,730 m ² departure or 32.2%)	21sqm

It is noted that the original development had a gross floor area (GFA) of 7,081sqm which equates to a FSR of 2.306:1 (31.8% departure or 1,709sqm) on the 3,070sqm site. The proposed modifications increase this departure by 21sqm resulting in a total departure of 32.2%. Notwithstanding this, the proposed modifications are minor internal and non-perceivable changes that will not result in any amenity impacts for adjoining residents.

(v) Overshadowing

The applicant has submitted amended diagrams and analysis that accompany the Section 96 to allow a comparison with the approved development. The overshadowing of the amended proposal is consistent with the impacts of the approved built form.

(vi) Council's Architectural Excellence Panel (AEP)

The modified proposal was reviewed by the AEP, who provided the following comments regarding:

1. "Amendments 1 (adjustment to building wall), 2 (increase size of A3.09 terrace by relocating privacy screen), 4 (enclosing unit 4.02 southern boundary), 7 (stair access to roof for maintenance) and 8 (extended awning) are supported from an urban design perspective, as

- they have a neutral impact on the aesthetics of the building, internal amenity of the units and amenity of surrounding properties.
2. Amendment 3 (south east addition to unit A4.04) may be acceptable provided that the additional bulk does not detrimentally impact on the solar amenity of the communal open space at Ground Level and the balconies/living areas to the units to the south (Building B). This is a matter for planning to consider.
 3. Amendment 5 (high level bedroom window Building B East and West Façade) is not supported. High level windows do not provide acceptable levels of amenity and outlook to habitable rooms and this is contrary to the design guidelines in the Apartment Design Guide (ADG page 81). Window sill of approximately 1.2m should be provided. Privacy can be achieved with internal shutters, if required.
 4. Amendment 6 (adjustment to internal layouts and unit mix) is generally supported, except changes to B4.01. An 85sqm apartment accommodating three bedrooms with two bathrooms is too small and is contrary to the minimum recommendations for apartment size in the ADG (page 89). B4.01 should be reconfigured as a 2 bed or 2 bed + study apartment, enabling the size of the living area and private open space (minimum of 10sqm) to be increased.
 5. Overall, the architectural expression of the South Elevation Building A is of a lower standard than the Section 96 (1). The proportion of solid walls/concrete has increased. The size of the windows has been reduced from 1.8m high x 3.8m wide to 1.3m high x 3.0m wide. Balcony openings have been reduced from 1.8 high x 2.4m wide to 1.3m high x 2.1m wide. Painted brick to the external walls at Level 4 provided a warm natural quality to the top level. This has now been replaced by precast concrete natural grey. Louvres were vertically proportioned and provided a cohesive design language to Buildings A and B. The squared-looking louvres to the South Elevation Building A is at odds with the design language of the overall development. It would be best that the architectural expression of the South Elevation Building A returns to its original form as per the Section 96 (1) approval, except the proposed metal balustrades at Level 4, which are supported.
 6. With regard to louvres, the need for louvres to south-facing windows to bedrooms is questionable, particularly given that the proposal provides building separation between habitable rooms varying from 12m to 15m. Additionally, fixed louvres to bedroom windows detrimentally impact on bedroom's outlook. It would be best if louvres were operable or retractable. Alternatively fixed louvres to bedrooms could be acceptable provided that sliding doors are provided so that the bedrooms have direct access to balconies."

The applicant submitted amended plans on 29 September 2016 to address AEP concerns. The amended plans were referred to the AEP who are now supportive of the modified proposal.

Housekeeping amendments

The applicant has requested minor amendments to various conditions as discussed below:

Condition 4

Condition 4 relates to the materials and finishes of the building. The details of the materials and finishes plan will be included in the modified condition 4 to reflect the updated plan submitted on 13 October 2016.

Condition 8

Condition 8 relates to the operation of the commercial premises. Part (d) relates to the storage of goods or equipment and stated that "All loading and unloading in connection with the use must be carried out wholly within the property from the dedicated loading space at the rear of the site, during the approved hours of operation and in such a manner so as to not cause an inconvenience to the public". Given that there is no dedicated loading space at the rear of the site, the words 'from dedicated loading space at the rear of the site' have been deleted from the condition.

Condition 63

Condition 63 relates to the minimum R rating for the building. This condition has been placed on the consent in error and is irrelevant given the building type and approved BASIX certificate.

Condition 64

Condition 64 relates to reticulated gas infrastructure. The application has requested that council remove the words 'with a separate meter for each dwelling must be provided'. No issue is raised with the modified wording of the condition.

Condition 70

Condition 70 relates to equitable access to all persons. Part (e) relates to accessible parking arrangements and has been modified from requiring 4 accessible visitor parking space to 3 accessible visitor parking spaces to correlate with Condition 11.

Condition 120

Condition 120 relates to the undergrounding of the electricity poles. The applicant wishes to modify the wording of the condition to require the new light pole to be steel. The Section 96 application was reviewed by Council's Development Engineer who raised no issue with the modification of Condition 120.

4. Community Consultation

The application was advertised, an on-site notice was erected and residents/property owners in the vicinity of the property were notified of the development in accordance with Council's Policy. No submissions were received.

Amended plans were submitted for the proposal during the assessment process. The plans were considered to have a reduced or similar impact on the adjoining properties and as such, in accordance with Council's Notification Policy, were not required to be re-notified.

5. Section 96 of the Environmental Planning and Assessment Act

Under Section 96 of the Environmental Planning and Assessment Act, 1979, Council, when considering a request to modify a Determination, must:

- (a) Be satisfied that the development as modified is substantially the same development as the development for which consent was originally granted;
- (b) Consult with any relevant authority or approval body;
- (c) Notify the application in accordance with the regulations;
- (d) Consider any submissions made; and
- (e) Take into consideration the matters referred to in Section 79C as are of relevance to the development the subject of the application.

Council considers that given that the categorisation of the proposed development, basement, commercial premises, footprint, and landscaped area remains unchanged that the proposed modifications will result in a development that is substantially the same development as the originally approved development.

The development being modified is substantially the same development as the development for which consent was originally granted. No authorities or bodies were required to be consulted. The application was notified in accordance with the regulations and Council's policy and no submissions were received.

6. Conclusion

The heads of consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, as are of relevance to the application, have been taken into consideration in the assessment of this application. The application is considered suitable for approval subject to the imposition of appropriate conditions.

PART E - RECOMMENDATION

THAT the application under Section 96 of the Environmental Planning and Assessment Act 1979 to modify modified Determination No. 201500081, dated 19 May 2016, be **APPROVED** and a modified Determination be issued with the Determination being modified in the following manner:

- (i) That condition **1, 4, 8, 63, 64, 70 and 120** being amended to read:

1. The development must be carried out in accordance with plans and details listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
Job No. 5729, Dwg No. DA-1101, Issue F	Basement Floor Plan B2	13 October 2016	Candalepas Associates	13 October 2016
Job No. 5729, Dwg No. DA-1102, Issue F	Basement Floor Plan B1	13 October 2016	Candalepas Associates	13 October 2016
Job No. 5729, Dwg No. DA-1103, Issue F	Ground Floor Plan	13 October 2016	Candalepas Associates	13 October 2016
Job No. 5729, Dwg No. DA-1104, Issue F	Level 1 Floor Plan	13 October 2016	Candalepas Associates	13 October 2016
Job No. 5729, Dwg No. DA-1105, Issue F	Level 2 Floor Plan	13 October 2016	Candalepas Associates	13 October 2016
Job No. 5729, Dwg No. DA-1106, Issue F	Level 3 Floor Plan	13 October 2016	Candalepas Associates	13 October 2016
Job No. 5729, Dwg No. DA-1107, Issue F	Level 4 Floor Plan	13 October 2016	Candalepas Associates	13 October 2016
Job No. 5729, Dwg No. DA-1108, Issue F	Roof Plan	13 October 2016	Candalepas Associates	13 October 2016
Job No. 5729, Dwg No. DA-1201, Issue F	Section A & B	13 October 2016	Candalepas Associates	13 October 2016
Job No. 5729, Dwg No. DA-1301, Issue F	North Elevation Building A	13 October 2016	Candalepas Associates	13 October 2016
Job No. 5729, Dwg No. DA-1302, Issue F	South Elevation Building A	13 October 2016	Candalepas Associates	13 October 2016
Job No. 5729,	North Elevation	13 October 2016	Candalepas	13 October

Dwg No. DA-1303, Issue F	Building B		Associates	2016
Job No. 5729, Dwg No. DA-1304, Issue F	South Elevation Building B	13 October 2016	Candalepas Associates	13 October 2016
Job No. 5729, Dwg No. DA-1305, Issue F	Elevations East & West	13 October 2016	Candalepas Associates	13 October 2016
Job No. 5729, Dwg No. DA-1401, Issue F	Adaptable Unit Plans	13 October 2016	Candalepas Associates	13 October 2016
S96	Access Review (Part 3 Site Ingress and egress, Part 4 Residential Paths of Travel, Part 5 Accommodation and Part 6 Common Areas)	11 December 2015	Morris-Goding Accessibility Consulting	17 December 2015
Version V110811/A, Certificate Number 16450057	NatHERS Thermal Performance – Multi Dwelling Certificate	18 December 2015	Dean Gorman	5 January 2016
608372M_04	BASIX Certificate	14 December 2016	NSW Department of Planning and Environment	5 January 2016

and details submitted to Council on 17 December 2015, 5 January 2016, 13 October 2016 with the application for development consent and as amended by the matters referred to in Part A of this Determination and the following conditions.

Reason: To confirm the details of the application submitted by the applicant.

4. The materials and finishes of the building constructed pursuant to this consent must be strictly in accordance with the materials and finishes identified in *Job No. 5729, Dwg Nos. DA-1301-DA1305, Issue F dated 13 October 2016*, prepared by Candalepas Associates. No changes may be made to these drawings except by way of an application under Section 96 of the Environmental Planning and Assessment Act 1979.

Reason: To ensure the final built development has an appearance that accords with the approved materials and finishes.

8. The ongoing use of the ground floor commercial tenancies complying with the following requirements at all times:
 - a) The areas to be used as shops must be restricted to the ground floor commercial tenancies;
 - b) The shop window display areas must be maintained at all times with no roller shutters being installed across the shopfronts;
 - c) The hours of operation are restricted to between the hours of 7.00am to 7.00pm Monday to Saturday and not at any time on Sundays or public holidays;

- d) All loading and unloading in connection with the use must be carried out wholly within the property during the approved hours of operation and in such a manner so as to not cause an inconvenience to the public;
- e) No storage of goods or equipment external to any building on the site is permitted; and
- f) No signs or goods must be displayed for sale or stored on the footpath in front of the premises at any time without the prior approval of Council.

Reason: To ensure that the commercial uses are confined to the ground floor shop areas, to preserve the streetscape and character of the area and to ensure that the operation of the premises does not interfere with the amenity of the locality.

63. Deleted.

64. Reticulated gas infrastructure must be provided to each dwelling in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate.

Reason: To provide the potential to reduce greenhouse emissions.

70. Before the issue of a Construction Certificate an amended plan must be submitted to the Certifying Authority's satisfaction indicating the following:

- a) Access to the premises via the principal places of entries to the building, complying with AS 1428.1- 2009 'Design for access and mobility';
- b) An accessible toilet complying with AS 1428.1- 2009 'Design for access and mobility' being provided for the commercial tenancies;
- c) The lift design must comply with AS 1735.12 -1999 'Lifts, escalators and moving walkways Part 12: Facilities for persons with disabilities' as a minimum requirement;
- d) A minimum of 16 adaptable dwellings being provided complying with AS 4299-1995 "Adaptable Housing"; and
- e) A minimum of 19 car parking spaces (16 accessible residential car spaces and 3 accessible visitor car spaces) must be provided for people with a disability that are directly accessible to the entrance to the building. The car parking must be designed to comply with AS 1428.1 - 2009 'Design for access and mobility - General requirements for access - buildings' and AS 2890.1 1 'Off-street car parking'.

Reason: To ensure that the premises provide equitable access to all persons.

120. The existing overhead power cables along New Canterbury Road frontage of the site must be relocated underground with appropriate street lighting and new steel light pole being installed to replace the existing light pole at the front of the site at no cost to Council and before the issue of an Occupation Certificate. The street lighting shall be designed in accordance with Australian Standard AS1158-Road Lighting and the Network Standards of Ausgrid and must meet lighting category required by RMS. Plans shall be submitted to and approved by Council before submission to Ausgrid for implementation.

Reason: To ensure appropriate lighting is provided to create a safe environment and to protect the amenity of the surrounding neighbourhood from the emission of light.