

SYDNEY NORTH PLANNING PANEL ASSESSMENT REPORT

Panel Reference	2017SNH017
DA Number	MOD0202/16
LGA	Ku-ring-gai
Proposed Development	Modification to JRPP approved DA0578/14 proposing various changes including revised shopfront to Lindfield Avenue, window configuration, carpark exhaust riser and lift over-runs
Street Address	43 Lindfield Avenue and 9 Havilah Lane, Lindfield
Applicant/Owner	WZRM Pty Ltd
Number of Submissions	None
Regional Development Criteria (Schedule 4A of the Act)	Section 96(2) modification to a development application determined by the Sydney West Joint Regional Planning Panel
List of all relevant s79C(1)(a) matters	• SEPP (Building Sustainability Index: BASIX) 2004 • SEPP (Infrastructure) 2007 • SEPP 65 • Apartment Design Guideline • Ku-ring-gai LEP (Local Centres) 2012 • Ku-ring-gai Local Centres DCP
Is a Clause 4.6 variation request required?	No
Does the DA require Special Infrastructure Contributions conditions (S94EF)?	No
Have draft conditions been provided to the applicant for comment? Have	The conditions were provided to the applicant on 24/04/2017 and no comments were received.

any comments been considered by council in the assessment report?	
List all documents submitted with this report for the Panel's consideration	Attachment A: Zoning extract Attachment B: Plans and elevations
Recommendation	Approval
Report prepared by	Jonathan Goodwill – Executive Assessment Officer
Report date	24 April 2017

PURPOSE OF REPORT

To determine a section 96(2) modification of the development consent for a mixed use development.

INTEGRATED PLANNING AND REPORTING

Places, Spaces & Infrastructure

Community Strategic Plan Long Term Objective	Delivery Program Term Achievement	Operational Plan Task
P2.1 A robust planning framework is in place to deliver quality design outcomes and maintain the identity and character of Ku-ring-gai	Applications are assessed in accordance with State and local plans	Assessments are of a high quality, accurate and consider all relevant legislative requirements

THE SITE

The site is an irregular shaped allotment, with a site area of 1810.2m². The site has frontages of 31.21 metres to Lindfield Avenue and 15.62 metres to Havilah Lane. The site has a maximum depth of 69 metres. The site has a fall of up to 4 metres (6%) from west to east and a cross fall from north to south of up to 1.4 metres (4%). An eight storey building containing four levels of basement car parking, eight habitable floors containing 36 apartments and a ground level 875m² retail tenancy space is currently being constructed on the site.

The site is bordered by Lindfield Avenue and the north shore railway line to the west and Havilah Lane to the east. The site is a 110 metres walk from the entrance to

Lindfield station. The adjacent site to the north contains a two storey residential flat building. A mixed use retail and residential development (140 apartments) is currently under construction on the adjacent site to the south.

THE APPROVED DA

DA0578/14 for, 'Demolition of existing structures and construction of a mixed use development consisting of retail and commercial space, 33 residential units, roof top swimming pools, basement parking and stratum subdivision' was approved via a deferred commencement consent on 8 August 2015 by the Sydney West Joint Regional Planning Panel. The consent became operative on 22 October 2015 and construction commenced in November 2015.

THE PROPOSAL (as amended)

Under the provisions of section 96(2) of the Environmental Planning and Assessment Act 1979, consent is sought to modify the Development Consent to DA0578/14 in the following ways:

Level 1

- i. delete ATM and mechanical plant cupboard behind shopfront to Lindfield Avenue
- ii. car park exhaust riser to the north-eastern side of Fire Stair 03 increased in size
- iii. shift the lift on the western side of Fire Stair 02 south to align with the southern wall of the fire stair
- iv. reconfigure the plant room on the north end of the Lindfield Avenue shopfront

Level 2

- i. concrete blade wall added to the southern side of the walkway servicing Unit 2.1
- ii. mechanical exhaust riser increased in size
- iii. stair pressurisation enclosure added to the eastern side of Fire Stair 03
- iv. car park exhaust riser to the north-eastern side of Fire Stair 03 increased in size

Level 3

- i. concrete blade wall added to the southern side of the walkway servicing Unit 2.1
- ii. concrete blade wall added to the eastern end of the south elevation to provide fire protection to the ensuite window of Unit 4.1
- iii. mechanical exhaust riser increased in size
- iv. car park exhaust riser to the north-eastern side of Fire Stair 03 increased in size
- v. secondary balcony to Unit 3.4 reduced in area by 5.3m² to accommodate the enlarged car park exhaust riser

Level 4

- i. concrete blade wall added to the southern side of the walkway servicing Unit 2.1

- ii. concrete blade wall added to the eastern end of the south elevation to provide fire protection to the ensuite window of Unit 4.1
- iii. mechanical exhaust riser increased in size
- iv. car park exhaust riser to the north-eastern side of Fire Stair 03 increased in size
- v. secondary balcony to Unit 4.4 reduced in area by 5.3m² to accommodate the enlarged car park exhaust riser

Level 5

- i. concrete blade wall added to the southern side of the walkway servicing Unit 5.1
- ii. concrete blade wall added to the eastern end of the south elevation to provide fire protection to the ensuite window of Unit 5.1
- iii. mechanical exhaust riser increased in size
- iv. modify the layout of the 3 bedroom apartment Unit 5.2 by deleting the library, relocating the study and converting the area previous occupied by the laundry and robe into a new study. Modify the size and shape of windows on the southern elevation to suit the new layout.
- v. car park exhaust riser to the north-eastern side of Fire Stair 03 increased in size
- vi. secondary balcony to Unit 5.3 reduced in area by 5.3m² to accommodate the enlarged car park exhaust riser

Level 6

- i. concrete blade wall added to the southern side of the walkway servicing Unit 6.1
- ii. concrete blade wall added to the eastern end of the south elevation to provide fire protection to the ensuite window of Unit 6.1
- iii. mechanical exhaust riser increased in size
- iv. modify the windows of the study and library on the southern wall of Unit 6.2
- v. increase the depth of the balcony on the southern side of Unit 6.3 and install privacy screens
- vi. car park exhaust riser to the north-eastern side of Fire Stair 03 increased in size

Level 7

- i. concrete blade wall added to the southern side of the walkway servicing Unit 7.1
- ii. concrete blade wall added to the eastern end of the south elevation to provide fire protection to the ensuite window of Unit 7.1
- iii. mechanical exhaust riser increased in size
- iv. window added to the stairwell on the southern wall of Unit 7.2
- v. balcony to Unit 7.3 increased in depth and install privacy screens
- vi. car park exhaust riser to the north-eastern side of Fire Stair 03 increased in size
- vii. window added to ensuite bathroom on the southern wall of Unit 7.2

Level 8

- i. south-eastern corner of the roof extended by 3m² to accommodate the extended blade wall on the floor below

- ii. lift overrun to the eastern side of Unit 7.2 reduced in height by 530mm, from RL 120.900 to RL 120.370
- iii. car park exhaust riser to the north-eastern side of Fire Stair 03 increased in size and widened by 1600mm to allow for a minimum offset of 6m to the southern side boundary

Roof plan

- i. lift overrun and mechanical exhaust riser increased in area
- ii. height of lift overrun and mechanical exhaust riser increased by 1365mm, from RL 120.900 to RL 122.265

Northern elevation

- i. green wall on western end of the northern elevation changed to a tiled finish

ASSESSMENT HISTORY

15 December 2016 – the applicant was asked to change the application from a section 96(1A) to a section 96(2)

22 December 2016 – the applicant submitted additional documentation and fees for the assessment of the application as a section 96(2)

29 March 2017 – the applicant was asked to supply copies of documents referred to in the statement of environmental effects but not submitted with the application

3 April 2017 – the missing documents were submitted

3 April 2017 – A letter was sent to applicant advising that the following issues were required to be addressed:

1. Lindfield Avenue shopfront

The modifications to the Lindfield Avenue shopfront do not comply with the following requirements of the DCP:

- 1. *Building entries to each individual commercial premises are to be level with adjoining footpaths, with openings (doors and windows) that allow a direct visual connection between the building and the street. See Figure 8C.10-4.*
- 2. *Building slabs are to be stepped on sloping sites to ensure ground floor level does not exceed 0.3m above or below finished footpath level.*
- 4. *Buildings on principal active street frontages are to:*
 - i) *maintain active frontage to 80% of the length of the building facade at the street level;*
 - ii) *The sill height of street frontage windows are not to be more than 1.2m above the adjacent street paving at any point. See Figure 8C.10-2.*

The proposed stair access into the retail tenancy is not support. Direct and wheelchair/stroller/trolley friendly access from Lindfield Avenue into the tenancy is required. The plans are required to be amended to comply with the design controls and objectives of the DCP.

2. Roof level retail platform

The application documentation does not explain why the approved retail plant room is not suitable for its intended purpose. Written justification from an appropriately qualified Engineer substantiating and providing detailed reasons for the retail plant room being unsuitable for use is required.

3. Acoustic impacts

The acoustic report does not appear to include an assessment of the noise impacts of the proposed roof level retail plant. The conclusion refers to, 'noise emitted by residential mechanical plant only'. In its current form the application documentation fails to demonstrate that the proposed roof level retail plant enclosure is suitable for its intended purpose, in particular, Council cannot be satisfied that the 1800mm high louvres will provide an appropriate level of acoustic attenuation.

Part 6.1.6 of the report refers to west facing intake louvres from the Level 5 Plan Room, however no openings for this room have been shown on the elevations.

The acoustic report and the plans are required to be amended to address the above issues.

4. SEPP 65 statement

The SEPP 65 Statement is required to be amended to include the following:

- i. a statement that the architect designed or directed the design of the modification of the development*
- ii. a statement that the architect designed or directed the design of the development for which consent was granted*
- iii. an explanation of how in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development*
- iv. verify that the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted*

5. Finishes

The proposal includes the deletion of the green wall and replacement with a tiled finish. The approved document DA0.00 A 'Renders' is required to be amended to show the new finish.

6. BASIX

The proposed modifications include changes to the windows of two apartments, accordingly an amended BASIX and/or nathers certificate which verifies that the star ratings of the affected units has not changed is required.

7. Privacy

The proposed modifications include increasing the depth of the secondary balconies to Units 6.3 and 7.3. The modification will result in direct overlooking between the extended balconies and the secondary balconies of Units 6.2 and 7.2. The plans are required to be amended to demonstrate how direct overlooking between the affected balconies will be prevented.

21 April 2017 – The applicant submitted amended plans and additional information including:

- i. updated BASIX certificate
- ii. revised SEPP 65 Design Verification Statement
- iii. amended architectural plans with the new retail plant area on the roof of Level 7 deleted and the Lindfield Avenue shopfront redesigned to address the issues raised in Council's letter

COMMUNITY CONSULTATION

Neighbouring properties were notified of the proposed development as per the requirements of the Ku-ring-gai Local Centres Development Control Plan. No submissions were received.

The amended plans were not required to be notified as the amendments did not increase the impacts of the proposal.

INTERNAL REFERRALS

Landscaping

Council's Landscape and Tree Assessment Officer provided the following comment:

The deletion of the greenwall is accepted as it was an additional external finish to the building proposed by the applicant and is not a DCP requirement. The appropriateness and detail of the replacement 'tiled finish' is to be determined by the assessing urban designer/planner.

EXTERNAL REFERRALS

Sydney Trains

The application was referred to Sydney Trains due to the proximity of the site to the rail corridor. Sydney Trains advised that no changes to the conditions they recommended for the DA consent were required.

STATUTORY PROVISIONS

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

Part A: Substantially the same development

The development, as modified is substantially the same development as that approved. The proposed modifications do not alter the essence or character of the development in any materially significant way.

Part B: Consultation with the Minister, public authority or approval body

The application was referred to Sydney Trains as the development consent contains conditions that were imposed as a requirement of their concurrence to the consent under clause 86 of SEPP (Infrastructure) 2007. Sydney Trains advised that no changes to their conditions were required.

Part C: Notification

The application has been notified in accordance with the Development Control Plan.

Part D: Submissions

No submissions have been received.

Part E: Section 79C considerations

An assessment of the modification against Section 79C (1) has been undertaken below.

Part F: Threatened species

The proposed modification does not relate to a development to which a bio-banking statement has been issued under the Threatened Species Conservation Act 1995.

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

The proposed amendments include modifications to approved windows and additional windows, accordingly an amended BASIX certificate has been submitted.

State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development

A design verification statement has been submitted in accordance with the requirements of the SEPP and the Environmental Planning and Assessment Regulation. The proposed modifications do not diminish the design quality of the building and was not referred to Council's Urban Design Consultant. The proposed modifications are not inconsistent with any of the requirements of the Apartment Design Guide.

State Environmental Planning Policy (Infrastructure) 2007

The parent DA was referred to Sydney Trains in accordance the requirements of Clause 86(4) of State Environmental Planning Policy (Infrastructure) 2007. The subject application was referred to Sydney Trains for advice on whether any changes to the conditions they imposed as concurrence requirements were required. On 7 March 2017 Sydney Trains advised that no changes to their concurrence requirements were required.

Ku-ring-gai LEP (Local Centres) 2012**Clause 2.3 - Zone objectives and Land Use Table**

The proposed modifications do not change the approved land use. The development as modified is a permissible form of development and consistent with the zone objectives.

Clause 4.3 – Height of buildings

The lift overrun and mechanical riser roof has a design level of RL 122.265 which results in a building height of 26.265m. The height of the approved building was 26.1m, therefore this modification represents a minor height increase of 165mm. The building height is compliant with the 26.5m height limit development standard.

Clause 4.4 – Floor space ratio

The deletion of the mechanical plant room behind the ATM increases the gross floor area, however the enlargement of the car park exhaust riser on the north-eastern side of Fire Stair 03 and reconfiguration of the lift on the western side of Fire Stair 02 offsets this increase. The modifications do not alter the floor space ratio of the approved development.

Clause 6.6 - Ground floor development in business zones

The objective of clause 6.6 is to ensure that active uses are provided at the street level in business zones to encourage the presence and movement of people

Subclause (3) of clause 6.6 states:

(3) Development consent must not be granted to development for the purposes of commercial premises or to a mixed use development with a commercial premises component, or a change of use of a building to commercial premises, on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building:

- (a) will not be used for the purposes of residential accommodation or a car park or to provide ancillary car parking spaces, and*
- (b) will provide uses and building design elements that encourage interaction between the inside of the building and the external public areas adjoining the building.*

The proposal seeks to modify the Lindfield Avenue shopfront by:

- i. deleting the ATM and mechanical plant room at the southern end of the shopfront adjacent to the residential lobby;
- ii. installing windows in that part of the shopfront previously occupied by the ATM and mechanical plant room;
- iii. changing the 2500mm high windows/doors to 1500mm high windows; and
- iv. relocating the retail entry from the southern end of the shopfront to the centre of the shopfront.



Figure 1 - approved shopfront



Figure 2 - modified shopfront

The modified shopfront retains a similar proportion of glazed area to solid wall as the approved shopfront design. Direct access between the footpath and the tenancy has been provided and views between the public domain and the interior of the tenancy are retained. The modifications are consistent with the objectives of clause 6.6 and the requirements of subclause (3).

Ku-ring-gai Local Centres DCP

Part 8C.10 – Ground floor commercial uses

The modifications to the Lindfield Avenue shopfront comply with the design controls and objectives in Part 8C.10 of the DCP. The shopfront windows have a maximum sill height of 1200mm and the deletion of the ATM and mechanical plant area increases the length of the active street frontage. Direct access between the footpath and the tenancy has been provided by shifting the main entry north, so that the floor level at the entry to the tenancy matches the footpath level.

Part 23.9 – General visual privacy

The proposal includes extending the balconies of Units 6.3 and 7.3 which would have resulted in overlooking of adjacent balconies to Units 6.2 and 7.2. The amended plans have addressed this issue through the addition of privacy screens to the balconies of Units 6.2 and 7.2. It is noted that the affected balconies are secondary private open space areas off walk in wardrobes and that the proposed modifications have no impact on the primary private open space areas located on the northern side of the building.

Part 23.4 – Materials and finishes

The proposed modifications include the deletion of the green wall on the western end of the northern elevation and replacement with a tiled finish in white and green colours to match the green tinted glass louvres on the Lindfield Avenue elevation. Design control 10 states that external walls must be constructed of high quality and durable materials and finishes. It is considered that tiles are a high quality and durable finish that will maintain the design quality of the development.

Part 23.6 – Building services

Design control 3 states that ventilation stacks are to be concealed within the building. The proposed lift overrun and mechanical riser roof is 1365mm higher than the roof over Level 08. The visual impact of the structure is minimised by its setback of 14.5m from the Lindfield Avenue boundary, 48m from the Havilah Lane boundary, 23m from the northern boundary and 3.6m from the southern boundary. The design of the lift overrun and mechanical riser roof is consistent with the objectives of Part 23.6.

CONCLUSION:

Having regard to the provisions of Section 96 & 79C of the Environmental Planning and Assessment Act 1979, the proposed modifications are considered Satisfactory, therefore, it is recommended that the application be approved.

RECOMMENDATION:

THAT the Sydney North Planning Panel approve MOD0202/16 and modify the consent to DA0578/14 for land at 43 Lindfield Avenue and 9 Havilah Lane Lindfield in the following manner:

Replace Condition No. 2 with the following condition:

2. Approved architectural plans and documentation (s.96)

The development must be carried out in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

Plan no.	Drawn by	Dated
DA5.00B Setback Diagram Plan	Vic Lake Architect	28/04/2015
DA5.01B Setback Diagram Sections	Vic Lake Architect	28/04/2015
DA5.04B Storage Diagram	Vic Lake Architect	04/05/2015
DA5.05B Adaptable Apartments Plan	Vic Lake Architect	28/04/2015
DA6.00B Site Plan	Vic Lake Architect	28/04/2015
DA6.01B Basement 04- Basement 03 Plans	Vic Lake Architect	28/04/2015
DA6.02B Basement 02- Basement 01 Plans	Vic Lake Architect	28/04/2015
DA6.03B Level 01 Floor Plan	Vic Lake Architect	28/04/2015
DA6.04B Level 02 - Level 03 Floor Plans	Vic Lake Architect	04/05/2015
DA6.05B Level 04 - Level 05 Floor Plans	Vic Lake Architect	04/05/2015
DA6.06B Level 06 - Level 07 Plans	Vic Lake Architect	04/05/2015
DA6.07B Level 08 Plan - Roof Plan	Vic Lake Architect	28/04/2015
DA7.00B Section AA & Section BB	Vic Lake Architect	28/04/2015
DA7.01B Section CC & Section DD	Vic Lake Architect	28/04/2015
DA8.00B North & South Elevations	Vic Lake Architect	28/04/2015
DA8.01B East & West Elevations	Vic Lake Architect	28/04/15
DA12.00B Stratum Plan	Vic Lake Architect	27/04/2015
C1.01 Issue B Stormwater Management and On Site Detention-Retention Tank - Plans	ACOR Consultants Pty Ltd	23.04.2015
C1.02 Issue B Stormwater Management and On Site Detention-Retention Tank - Sections	ACOR Consultants Pty Ltd	23.04.2015
1.01, 1.02, 1.03, 1.04, 1.05, 1.06 and 1.07, all Issue 1	ACOR Consultants Pty Ltd	12/2014
LP01 Issue B Level 1 Landscape Plan	Site Design + Studios	30/04/15
LP02 Issue B Level 2 and Level 3 Landscape Plan	Site Design + Studios	30/04/15
LP03 Issue B Level 4 and 5 Landscape Plan	Site Design + Studios	30/04/15

LP04 Issue B Level 6 and 7 Landscape Plan	Site Design + Studios	30/04/15
LP05 Issue B Level 8 Landscape Plan	Site Design + Studios	30/04/15
LP06 Issue A Southern Elevation Green Wall	Site Design + Studios	29/04/15
LP07 Issue A Northern Elevation Green Wall (note: green wall of the western end of the northern elevation is deleted)	Site Design + Studios	29/04/15
LP08 Issue A Vertical Green Wall Details & Notes	Site Design + Studios	29/04/15
DA13.00A Vehicle Ramp Details	Vic Lake Architect	17/12/2014
DA4.02A Excavation plan	Vic Lake Architect	12/12/2014
DA4.01A Demolition plan	Vic Lake Architect	12/12/2014

Document(s)	Dated
Colours and finishes schedule - DA1.01A Mood Board and Finishes Vic Lake Architecture DA0.00A Renders Vic Lake Architecture (note: south-west render to be in accordance with Drawing No. S96 4.00 A dated 18/04/17)	11/12/2014 17/12/2014
Basix certificate No. 597802M_07	19 April 2017
Access Report prepared by BCA Access Reference 104511-Acess-r5	18/12/2014
Arborist Report prepared by Jacksons Nature Works	18/12/2014
Acoustic Report prepared by Day Design Pty Ltd	5 May 2015
Waste Management Program prepared by Harris Farm Markets	23 April 2015
Traffic Assessment prepared by Traffic Impact Services Pty Ltd	December 2014 received by Council May 2015
Waste Management Plan prepared by Arkibuild	14/12/14
Rail Noise Intrusion Report prepared by Day Design Pty Ltd	18/12/2014
Environmental Noise Impact Assessment prepared by Day Design Pty Ltd	18/12/2014
BCA Assessment Report prepared by BCA Logic Reference 104511-BCA-r5	17/12/2014
Remediation Action Plan report E22407 AA Rev 0 prepared by Environmental Investigations Australia	19 December 2014
BCA Section J Report prepared by Building & Energy Consultants Australia	May 2015

Except where amended by that work shown in colour on the S.96 plans endorsed with Council's stamp, as listed below, and except where amended by other conditions of this consent:

s.96 plan no.	Drawn by	Dated
S96 1.00 A Level 01 Floor Plan + BASIX	Vic Lake Architect	18/04/2017
S96 1.01 A Level 02 – Level 03 Plans	Vic Lake Architect	18/04/2017
S96 1.02 A Level 04 – Level 05 Plans	Vic Lake Architect	18/04/2017

S96 1.03 A Level 06 – Level 07 Plans	Vic Lake Architect	18/04/2017
S96 1.04 A Level 08 – Roof Plan	Vic Lake Architect	18/04/2017
S96 2.00 A North & South Elevations	Vic Lake Architect	18/04/2017
S96 2.01 A East & West Elevations	Vic Lake Architect	18/04/2017
S96 4.00 A Lindfield Ave View	Vic Lake Architect	18/04/2017

Reason: To ensure that the development is in accordance with the determination.

Replace Condition No. 84 with the following condition:

84. Compliance with BASIX Certificate

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority shall be satisfied that all commitments listed in BASIX Certificate No.597802M_07 and dated 19 April 2017 have been complied with.

Reason: Statutory requirement.

Signed

Jonathan Goodwill
Executive Assessment Officer

Selwyn Segall
Team Leader Development Assessment South

Corrie Swanepoel
Manager Development Assessment

Michael Miocic
Director Development & Regulation