

# independent assessment of s.96(2) application

To Modify Consent No. 198/2015  
For Staged Redevelopment of Rosenthal Car Park

**Property:**

Various Lots  
Nos. 2-20 Rosenthal Avenue,  
Lane Cove

**Applicant:**

ADCO Constructions Pty Ltd

**Date:**

October 2017

Prepared by:

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# REPORT TO JRPP – S.96 DA 198/2015 2 – 20 ROSENTHAL AVENUE, LANE COVE

## APPLICATION DETAILS

**Proposed Development:** Amendment to approved “*Staged redevelopment of Rosenthal Car Park, Rosenthal Avenue, Lane Cove and to include 500 car spaces, retail and public open space.*”

**Properties:** Nos. 2 – 20 Rosenthal Avenue, Lane Cove

**DA No:** S.96(2) Application – DA 198/2015

**Date Lodged:** 24<sup>th</sup> April, 2017

**Cost of Work:** N/A for S.96

### Cadastral and Ownership Details:

ADDRESS	LOT DESCRIPTION	OWNER
2-20 Rosenthal Avenue	Lot 28 DP 10155	Lane Cove Council
2-20 Rosenthal Avenue	Lot 29 DP 10155	Lane Cove Council
2-20 Rosenthal Avenue	Lot 30 DP 10155	Lane Cove Council
2-20 Rosenthal Avenue	Lot 31 DP 10155	Lane Cove Council
2-20 Rosenthal Avenue	Lot 32 DP 10155	Lane Cove Council
2-20 Rosenthal Avenue	Lot 33 DP 10155	Lane Cove Council
2-20 Rosenthal Avenue	Lot 34 DP 10155	Lane Cove Council
2-20 Rosenthal Avenue	Lot 37 DP 10155	Lane Cove Council
2-20 Rosenthal Avenue	Lot 35 DP 1109939	Lane Cove Council
2-20 Rosenthal Avenue	Lot 1 DP 182149	Lane Cove Council
2-20 Rosenthal Avenue	Lot 1 DP 80938	Lane Cove Council
<b>TOTAL</b>	<b>12 LOTS</b>	

**Applicant:** ADCO Constructions Pty Ltd

<b>ZONE</b>	B2 – Local Centre (part Rosenthal Avenue and part Birdwood Lane) B4 – Mixed Use (existing car park)
<b>IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE?</b>	Yes. No change to land use nor permissibility as part of modifications proposed under S.96(2) application.
<b>IS THE PROPERTY A HERITAGE ITEM?</b>	No. The site is not listed as a heritage item in Lane Cove Local Environmental Plan 2009. The substation building was previous listed in Ausgrid’s Section 170 heritage register as having local significance but has since been delisted from Ausgrid’s heritage register.
<b>IS THE PROPERTY WITHIN A CONSERVATION AREA?</b>	No
<b>IS THE PROPERTY ADJACENT TO BUSHLAND?</b>	No
<b>BCA CLASSIFICATION</b>	Class 6 Retail and Class 7a Car park
<b>STOP THE CLOCK USED?</b>	No
<b>NOTIFICATION</b>	The development proposal was notified in accordance with Council’s Notification Policy between 2 <sup>nd</sup> May 2017 and 16 <sup>th</sup> May 2017.

## **REASON FOR REFERRAL TO JRPP**

In accordance with the provisions of Clause 20 of State Environmental Planning Policy (State and Regional Development) 2011 (as cross referenced to Schedule 4A to the Environmental Planning and Assessment Act 1979), the original development application was referred to the Joint Regional Planning Panel (JRPP) due to it being “*General development over \$20 million*”, as well as “*Council related development over \$5 million*”. In this regard, the original development had a value of \$41,750,000 and was to be undertaken on land owned by Lane Cove Council.

Accordingly, as required by S.21(1)(b) of the SEPP, applications lodged under S.96(2) are also to be determined by the JRPP.

## **EXECUTIVE SUMMARY**

- Sydney East JRPP(now Sydney North Planning Panel – “SNPP”) approved Stage 1 Concept DA No. 198/2015 on 28<sup>th</sup> April 2016 for the following development on the subject site:

*“Staged redevelopment of Rosenthal Car Park, Rosenthal Avenue, Lane Cove and to include 500 car spaces, retail and public open space.”*

The Stage 1 Consent was a concept approval for a staged development on the site under Section 83B of the Environmental Planning and Assessment Act 1979 and provided an approved building envelope and general arrangement plan for the proposed redevelopment of the existing car park within the site. In summary, the proposed redevelopment allowed for the following:

- The construction of a six (6) level building, comprising four (4) basement levels of parking, one (1) below ground level of retail floor space and one (1) level of public open space and retail floor space at ground level contained within a building envelope with a maximum height of RL91.00 and 13.7m above the existing ground and a proposed floor space ratio (FSR) of 0.8:1.
- Vehicular access to the site from Rosenthal Avenue, including the construction of a new roundabout at the intersection of Finlayson Street and Rosenthal Avenue and pedestrian bridge over Rosenthal Avenue (both subject to approval under the Roads Act 1993).
- A public car park comprising 500 car spaces over four (4) basement levels, allocated as follows:
  - 235 car spaces for the proposed retail space;
  - 176 car spaces for the replacement of the existing public car park; and
  - 89 car spaces for future developments and additional parking for the CBD.
- Retail space over two levels above the four levels of parking, including 5,280m<sup>2</sup> of retail space on the retail level below ground and 925m<sup>2</sup> of retail space within the landscaped public open space zone on the top level (i.e. at ground level adjacent to Rosenthal and Birdwood Lanes).
- A public plaza and landscaped open space on the roof of the structure accessible from Birdwood Lane and Rosenthal lane to create a continuous pedestrian link through to Lane Cove Plaza and the existing pedestrian arcades through to Longueville Road.

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- A minor closure and realignment of part of Rosenthal Avenue to allow the development to extend over part of Rosenthal Avenue and Birdwood Lane.
- Under this approval, building envelopes were adopted for the future development, inclusive of the following development standards and design parameters:

Provisions	Proposed
GFA	6,205m <sup>2</sup>
FSR	0.88:1
Building height (AHD)	RL 91.00 (maximum)
Car parking spaces	500 (minimum)
Setbacks	Nil

- The above parameters were deemed to have satisfactorily addressed issues relating to the overall bulk, scale and impact of the development.
- A Section 96(2) application was lodged with Council on 24<sup>th</sup> April, 2017 and seeks to make changes to the Stage 1 Consent. These modifications relate to: changes to the envelope of the basement car park levels; changes to the level of the park surface to improve the relationship with the proposed retail tenancies; reconfiguration of the footprint of the retail tenancies on Levels 2 and 1; reconfiguration of the loading dock, storage area and car park at Basement Car Park Level 0; a minor increase in maximum gross floor area (GFA) and the amount of car spaces to be provided on-site; and changes to pedestrian access through the park and around the site.
- DA No. 46/17 was also lodged by the same applicant with Council on 24<sup>th</sup> April 2017 for Stage 2 of the development approved under the concept plan, seeking approval for a six (6) storey mixed use building comprising Four basement levels of parking, Retail premises for two supermarkets (Coles and ALDI), and Public open space and retail tenancies at Level 2 generally in accordance with the concept plan approval but subject to the amendments proposed under this S.96 application. The assessment of this application is the subject of a separate, concurrent report to the Sydney North JRPP, with approval recommended.
- A third application – DA No. 47/17 – for an early works program consisting of the demolition of all existing structures, removal of trees and site preparation (including excavation and construction of retaining walls) to facilitate the undertaking of the stage 2 development was approved by Council's Independent Hearing and Assessment Panel (IHAP) on 6<sup>th</sup> June 2017.
- A total of three (3) submissions were received in relation to the proposal during the notification period. Two of the submissions were in support of the proposed modifications and provided suggestions for landscaping and usage of the public area, as well as raising a number of issues in relation to BCA compliance, location of toilets and some pedestrian connections in and around the site. The third submission raised a specific issue in relation to traffic movement in around the site and its impact on No. 71 Longueville Road.
- These issues are considered to have been satisfactorily addressed via the amendments currently proposed or in the more detailed design for the development presented under the Stage 2 DA, or can be addressed by conditions of consent to the Stage 2 DA where necessary.
- The proposed development demonstrates continued compliance with the relevant provisions of Lane Cove Local Environmental Plan 2009.

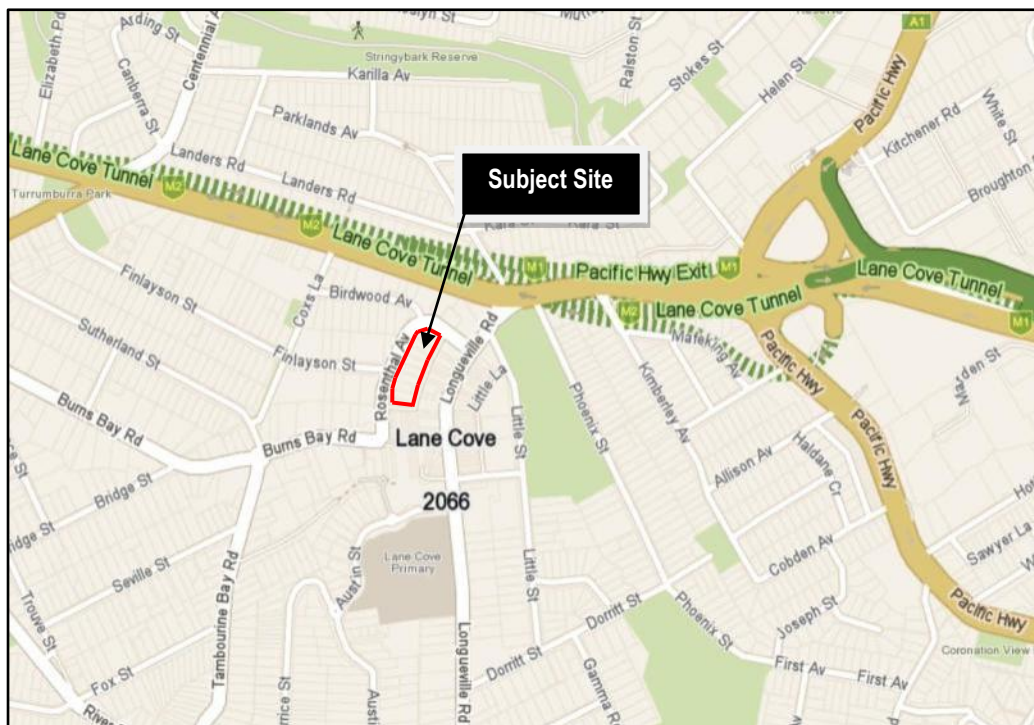
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- The amended proposal also remains consistent with all relevant requirements of Lane Cove Development Control Plan 2010.
- The modifications sought by the applicant are considered to result in an improved built form outcome, a more rational configuration, improved pedestrian access and connectivity and additional parking with no greater impact and are therefore supported. As such, it is recommended that the application be modified in the manner described at the end of this report.

### THE SITE

The site comprises 12 allotments known as Nos. 2-20 Rosenthal Avenue and is located on the eastern side of Rosenthal Avenue at Lane Cove between Birdwood Avenue to the north and Burns Bay Road to the south. The site comprises an existing Council car park fronting Rosenthal Avenue to the west and north; Birdwood Lane to the east; and, Rosenthal Lane to the south, and has a total area of approximately 7,031m<sup>2</sup>.

A map showing the location of the site is provided as Figure 1 below.



**Figure 1** – Locality Plan

The site falls from Birdwood Lane at the east down to Rosenthal Avenue to the west by approximately 7m and from Rosenthal Lane at the south down to Rosenthal Avenue at the north by approximately 2m.

Existing development on the site comprises a Council-owned car park with 176 on-grade parking spaces accessed from Rosenthal Avenue and Birdwood Avenue. An Ausgrid substation and public toilet block are located on the eastern side of the site adjacent to Birdwood Lane. The demolition of these structures was approved under the recent granted to DA 47/17 for the early works on the site as indicated above.



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Mature trees and shrubs comprising predominantly endemic species are located around the perimeter and through the middle of the site. Approval for removal and replacement of this vegetation has also been granted under the recent consent issued to DA No. 47/17 for the early works on the site.

### Surrounding Uses

The subject site is located at the north-western end of the Lane Cove CBD. The development immediately surrounding the site is characterised as follows:

- North – a recently constructed seven storey residential flat building (“Atrium”) and a two storey commercial building (“Club Lane Cove”). An additional residential flat building seven storeys in height is under construction to the north-west of the site (“Quartet”).
- South – Rosenthal Lane and then the rear of one and two storey retail and commercial developments fronting the Burns Bay Road pedestrian mall.
- East – Birdwood Lane and then the rear of one and two storey retail and commercial developments fronting Longueville Road.
- West – St Andrew’s Anglican Church to the south of Finlayson Street and a dental clinic to the north of Finlayson Street.

An aerial photograph identifying the location of the subject site in the context of the surrounding area and nature of surrounding land uses is provided as Figure 2 below/on the following page.



**Figure 2** – Aerial Photograph  
(Source: Google Earth)

## DETAILS OF PROPOSED MODIFICATIONS

### Details of and Justification for Proposed Changes to the Development

The applicant has sought modifications to the concept development approved under consent no. 198/2015 pursuant to the provisions of Section 96(2) of the Environmental Planning and Assessment Act, 1979. In this regard, the applicant has advised as follows:

*Following the approval of the Stage 1 Consent and given the substantial size of the proposal, a detailed design review process of the entire development occurred. This review incorporated a functional and operational analysis of the various components of the development and has resulted in the following amendments to the proposed development:*

- 1. Variation to the building envelope of the basement car park levels following a rationalisation and optimisation of the extent of excavation (refer to Drawing Nos. AR-DA951, AR-DA952 and AR-DA953 all Rev 1 for comparison of approved and proposed schemes);*
- 2. The park surface has been lowered to improve the relationship with the proposed retail tenancies, which has required a variation to all floor levels across the development and an increased depth of excavation RL64.00 to RL62.54.*
- 3. The footprint of the retail tenancies at Level 2 have been reconfigured;*
- 4. The layout of the retail tenancies and plant areas at Level 1 have been reconfigured to meet the specific requirements of the two supermarket tenants (Coles and ALDI);*
- 5. The layout of the loading dock, storage area and car park at Basement Car Park Level 0 have been reconfigured;*
- 6. The maximum gross floor area (GFA) has been increased from 6,210sqm to 6,500sqm;*
- 7. Clarification that 500-519 car spaces will be provided on-site; and*
- 8. The provision of pedestrian access through the park and linking to the proposed pedestrian bridge across Rosenthal Avenue (subject to separate Part 5 approval) instead of providing pedestrian access along the full length of the Rosenthal Avenue frontage.*

In summary, the applicant has indicated that the points of difference between the two schemes are primarily the reconfiguration of the basement building envelopes and retail footprints at Level 2, reconfiguration of internal layouts, reduction in the floor levels and a variation to pedestrian access and connectivity.

As a result, the applicant has indicated that four (4) conditions of consent to DA No. 198/2015 require modification, those being conditions 2, 3, 5 and 12. The applicant's detailed justification for these modifications and an assessment of the merit of each is provided later in the report.

Conversely, the following characteristics of the original consent aspects of S.96(2) proposal remain unchanged:

- The description, use and nature of the development (i.e. it remains "redevelopment of the Rosenthal Car Park for a minimum of 500 car spaces, retail and open space");
- The boundary of the proposed development;

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- The maximum height and number of levels of the building (i.e. it remains at 13.7m above ground level and RL91.0 and hence below the 15m height limit and compliant with the maximum RL set under the concept approval of RL91.0);
- The provision of public open space at roof level and an active retail frontage to Birdwood Lane.

### Amended Information

The S.96(2) application was accompanied by the following information:

- Amended architectural plans prepared by Scott Carver Pty Ltd;
- An Accessibility Statement prepared by MGAC – assessing the alternate pedestrian circulation network proposed as part of the amended development to compensate for the loss of the street level footpath on the frontage to Birdwood and Rosenthal Avenues to justify amendment to condition 12;
- A Detailed Site Investigation prepared by DLA Environmental Services;
- A Remediation Action Plan prepared by DLA Environmental Services; and
- Correspondence from Ausgrid and NSW Office of Environment and Heritage regarding substation.

### Pre-Lodgement Liaison

The applicant and its team attended pre-lodgement meetings with Council on 2<sup>nd</sup> March 2017 in relation to both the S.96 application and Stage 2 DA. The applicant has advised that the plans and documentation submitted with the S.96 has considered and addressed Council's comments on the proposed modification where appropriate.

### ASSESSMENT OF PROPOSED MODIFICATIONS

An assessment of the merits of each of proposed changes above is provided below, along with a comment as to what (if any) changes are required to the consent as a result.

#### 1. Condition 2 – Approved Drawings

Condition 2 references drawings DA-01 to DA-15 prepared by Saunders Global Architects dated 23/11/2015, except for any changes modified by subsequent conditions of consent. The S.96 application seeks to modify Condition 2 by making reference to new plans prepared by Scott Carver which propose the following changes:

SUMMARY OF PLAN AMENDMENTS		
Amended Drawing Reference	DA 198/15 Reference	Modification
AR-DA903 Rev 1	DA06 Rev A	<ul style="list-style-type: none"> <li>• Reconfigured building envelope of the retail zones.</li> <li>• Amendment to the building envelope above the car park entry from Rosenthal Avenue.</li> </ul>
AR-DA902 Rev 1	DA07 Rev A	<ul style="list-style-type: none"> <li>• Reconfigured building envelope of the retail zones and indicative retail footprint.</li> <li>• Amendment to the building envelope above the car park entry from Rosenthal Avenue.</li> </ul>



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SUMMARY OF PLAN AMENDMENTS		
Amended Drawing Reference	DA 198/15 Reference	Modification
		<ul style="list-style-type: none"> <li>Structural level has been changed.</li> <li>Indicative locations of the stage and amenities have been shown.</li> </ul>
AR-DA901 Rev 1	DA08 Rev A	<ul style="list-style-type: none"> <li>Amendment to the building envelope above the car park entry from Rosenthal Avenue and adjacent to the Birdwood Avenue, Rosenthal Avenue and Birdwood Lane frontages.</li> <li>Reconfiguration of the internal layout and floor area of the retail tenancies.</li> <li>Floor level has been changed.</li> </ul>
AR-DA900 Rev 1	DA09 Rev A	<ul style="list-style-type: none"> <li>Amendment to the building envelope above the car park entry from Rosenthal Avenue and adjacent to the Birdwood Avenue frontage.</li> <li>Reconfiguration of the internal layout and floor area of the retail tenancies.</li> <li>Floor level has been changed.</li> </ul>
AR-DA899 Rev 1	DA10 Rev A	<ul style="list-style-type: none"> <li>Amendment to the building envelope, particularly adjacent to the Birdwood Avenue and Rosenthal Lane frontages.</li> <li>Floor level has been changed.</li> </ul>
AR-DA898 Rev 1	DA11 Rev A	<ul style="list-style-type: none"> <li>Amendment to the building envelope, particularly adjacent to the Rosenthal Lane frontage.</li> <li>Floor level has been changed.</li> </ul>
AR-DA897 Rev 1	DA12 Rev A	<ul style="list-style-type: none"> <li>Amendment to the building envelope, particularly adjacent to the Rosenthal Lane frontage.</li> <li>Floor level has been changed.</li> </ul>
AR-DA904 Rev 1	DA13 Rev A	<ul style="list-style-type: none"> <li>Floor levels and building envelopes have been lowered.</li> </ul>
AR-DA905 Rev 1	DA14 Rev A	<ul style="list-style-type: none"> <li>Floor levels and building envelopes have been lowered.</li> </ul>
AR-DA906 Rev 1	DA15 Rev A	<ul style="list-style-type: none"> <li>Floor levels and building envelopes have been lowered.</li> </ul>
AR-DA832 Rev 1	Condition 3	<ul style="list-style-type: none"> <li>The maximum GFA has been increased from 6,210sqm to 6,500sqm.</li> </ul>

**Comment:**

No objection is raised to the reconfiguration and slight increase in gross floor area (as discussed in more detail below). The reduction in levels of the park to improve the relationship with the proposed retail tenancies and connections to the surrounding footpath network, roadways and proposed bridge over Rosenthal Avenue is also supported given enhanced accessibility and future amenity of this public space. To this end, it is noted that no objections to this change have been raised by Council's Community Development Officer, Ageing and Disability.

In addition, no objection to the reconfiguration of the loading dock, storage area and car park at Basement Level 0 has been raised by Council's Traffic and Transport Section, with the amended layout deemed to be an improvement over that originally approved following a further more detailed review of overall vehicle movements into, through and out of the development.

The overall building footprint and boundary of the proposed development remain unchanged as a result of the proposed modifications, whilst the maximum height of the building (13.7m and RL91.0m) remains below the 15m height limit and compliant with the maximum RL set under the concept approval of RL91.0.

As such, the changes sought to the approved plans are deemed to be satisfactory and hence supported.

**Required Action/Changes to the Consent:**

Condition 2 needs to be amended to make reference to the new plans prepared by Scott Carver submitted with the application, but retaining a reference to the road closure plan currently included in Condition 1.

**2. Condition 3 – Maximum Gross Floor Area (GFA)**

Condition 3 currently specifies a maximum gross floor area (GFA) of 6,210m<sup>2</sup>. The modification proposes increases the maximum GFA 290m<sup>2</sup> to 6,500m<sup>2</sup>, a net which equates to an FSR of 0.90:1. As such, the application seeks to modify Condition 3 to read:

*“The maximum gross floor area of the proposed development shall not exceed 6,500m<sup>2</sup> (round off) to reflect the amended plans referred to above”.*

The applicant has indicated the reason for the change is as follows:

*The detailed design review undertaken as part of the Main Works DA identified an error in calculating the GFA in the original Stage 1 Consent. The increase in the GFA provides for the inclusion of:*

- *habitable basement spaces for Tenancy 1;*
- *a retail entry foyer; and*
- *increased area in the retail envelope at the park level.*

**Comment:**

The proposed changes improve access to the retail component of the development and better facilitate the occupation and ongoing operational aspects of this area by the two major supermarket tenants. In addition, the proposed increase in the GFA by 290m<sup>2</sup> up to a total of 6,500sm<sup>2</sup> takes overall FSR of the development to 0.90:1, which is significantly below the maximum FSR allowable under the LEP for this site of 2:1. In addition – and as discussed below – the additional car parking generated by the additional floor space can be satisfactorily accommodated by the car parking provision in the proposed development.

On this basis, the proposed increase in gross floor area is supported.

**Required Action/Changes to the Consent:**

Condition 3 needs to be amended to read:

*“The maximum gross floor area of the proposed development shall not exceed 6,500m<sup>2</sup> (round off)”.*

**3. Condition 5 – Car Parking**

The applicant seeks to modify Condition 5, which currently requires the provision of 500 spaces within the development, to read:

*“The provision of 500-519 car spaces shall be provided within the development.”*

The reason for the proposed change is that the detailed design review undertaken as part of the Stage 2 DA has identified that more than 500 car spaces can be accommodated within the four basement car park levels.

**Comment:**

The Traffic and Parking Assessment submitted with the Stage 2 DA indicates that the proposed development would generate a requirement for 164 car parking spaces, inclusive of the minor additional floor space proposed under this modification. When taking into account the replacement of the existing 176 on-grade spaces, the total number of car parking spaces required for the development would be 340 spaces. As such, the number of spaces proposed to be provided – i.e. 500 to 519 – is well in excess of the requirements under Lane Cove DCP.

Given the additional GFA proposed under this application does not increase the amount of parking required to anywhere near 500 spaces as currently stipulated under the Stage 1 consent, there is actually no need to change the condition as proposed by the applicant. Furthermore, the number of spaces proposed by the applicant is a range rather than a specific number and may still change as part of the assessment of the Stage 2 DA or in complying with any potential consent conditions for same. Therefore, whilst it is acknowledged that the current design may result in a greater provision of parking space than the 500 spaces, it is considered that this condition should be amended to simply specify the minimum of spaces required (i.e. 500) rather than a range of 500 – 519 as proposed by the applicant to retain some flexibility. This would cover the situation where more than 500 spaces can be provided but less than 519 and thereby avoid the possible need for further Section 96 application.

**Required Action/Changes to the Consent:**

Condition 5 should be amended to read:

*“The provision of a minimum of 500 car spaces within the development.”*

**1. Condition 12 – Pedestrian access along Rosenthal Avenue**

Condition 12 currently states:

*“A suitable pedestrian access shall be provided along the full length of the Rosenthal Avenue frontage. The design of this facility must be included in the Stage 2 development application.”*

The applicant seeks to delete this condition for the following reason:

*Footpath access along the Rosenthal Avenue frontage is not considered appropriate having regard for pedestrian safety nor considered necessary due to the alignment of the levels of Birdwood Lane and the public open space. Alternative pedestrian access through the public open space and linking to the proposed pedestrian bridge (subject to separate Part 5 approval) is proposed.*

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Condition 12 of the Stage 1 Consent requires suitable pedestrian access to be provided along the full length of the Rosenthal Avenue frontage. Following pre-lodgement discussions with Council, it is understood that this condition was included in the Stage 1 Consent in response to an issue raised by an objector during the SEJRPP hearing. In particular, the footpath at road level along Rosenthal Avenue had been removed as part of the Stage 1 concept given the location of the loading dock and car park entry. Therefore, pedestrians could not continue on-grade along the Rosenthal Avenue frontage and were required to either use stairs to access the public open space or cross over Rosenthal Avenue.

This issue has been resolved as part of the proposed development by aligning the level of the public open space with Birdwood Lane thereby allowing pedestrians to continue walking on-grade with a clear line of sight to the pedestrian bridge. Pedestrians can then utilise the bridge (subject to separate Part 5 approval) to cross Rosenthal Avenue, or continue through the park to the corner of Rosenthal Lane and Rosenthal Avenue. The proposed pedestrian connections are considered to present a safer option than an elevated footpath around the perimeter of the site. The principal site connections are detailed in Figure 2.

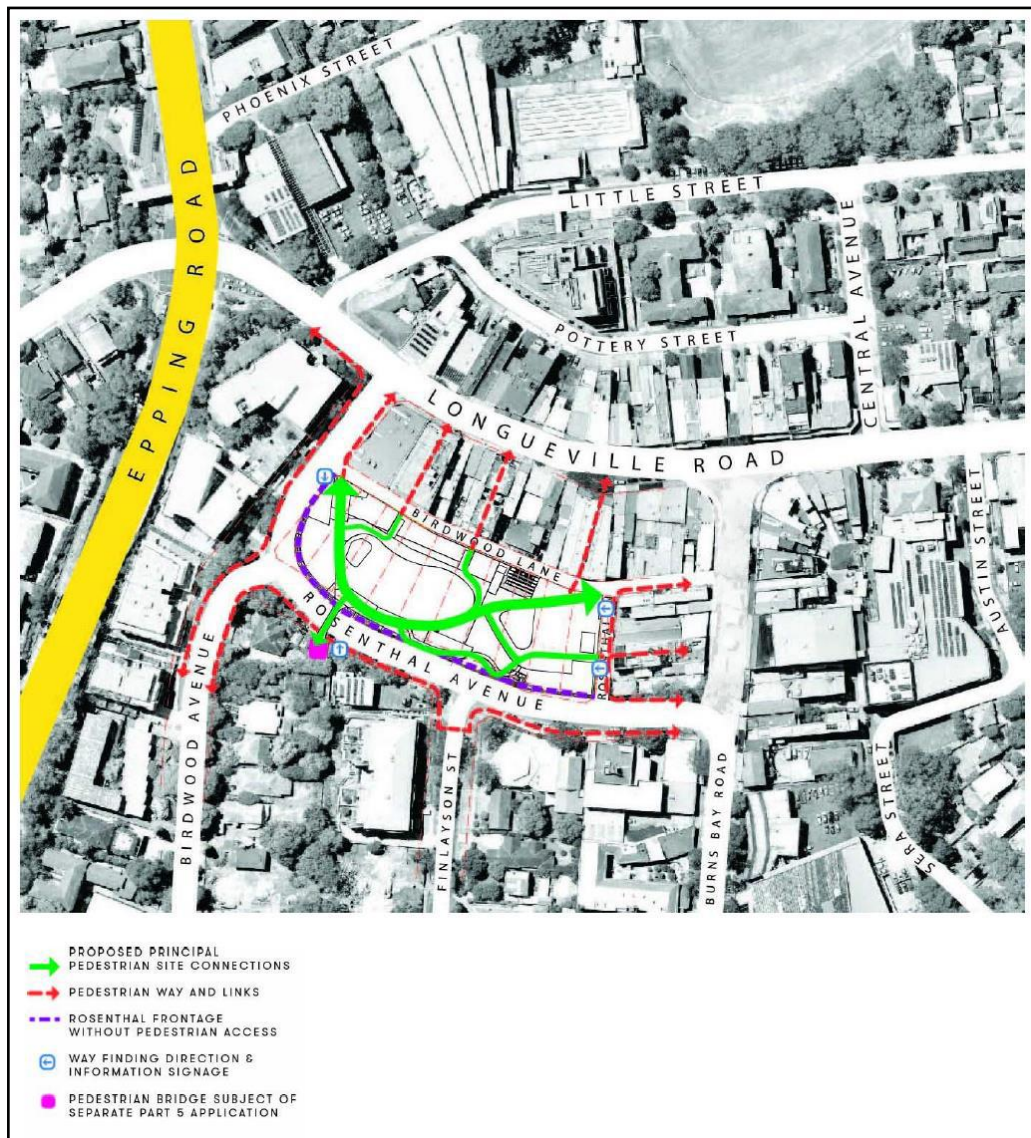


Figure 2 (Source: Scott Carver)



*The proposed approach was reviewed by Accessibility Consultants, MGAC and the following statement provided (see Appendix C):*

*“From an Accessibility perspective, this proposal provides a superior method for pedestrians to communicate to either of these two destinations. The proposed pathway:*

- a. eliminates the dangers to pedestrians in crossing Birdwood Avenue and/or Rosenthal Avenue*
- b. is not immediately adjacent to a vehicle carriageway, and eliminates the dangers associated with pedestrians in close proximity to moving vehicles*
- c. separates by elevation the pedestrian circulation function and the delivery dock*
- d. eliminates the need to negotiate various infrastructure associated with the street (potential tripping points such as kerbs, kerb ramps and the like)*
- e. is significantly wider than the kerbside footpath it replaces and provides safer opportunities for pedestrians (wheeled, or ambulant) to meet and pass each other*
- f. is located well within the site, not adjacent to any building edge where accidental falls to surfaces below are possible*
- g. will provide safe gradients for all persons to travel this route as compared to the naturally occurring steeper topography in the area.*

*Whilst this is a proposal that would definitely benefit persons with disabilities – wheeled, ambulant, vision and hearing impaired – in my opinion, it is a proposal that will engender benefit for the community as a whole.”*

*A key issue raised by Council during pre-lodgement discussions was ensuring the continued function of the elevator connecting the Finlayson Street residential area and the proposed public open space. Whilst it is not possible to guarantee that the elevator will always be fully operational, even with regular servicing and maintenance, a management strategy will be put in place in the event of the elevator breaking down. As outlined in the Traffic Impact Assessment prepared in support of the Main Works DA, this will involve wayfinding signage directing less mobile pedestrians to alternate paths via Lane Cove Plaza or to the signalised intersection at Birdwood Avenue and Longueville Road, see Figure 3 (over page).*

*Having regard to the above, the proposed pedestrian access and connectivity to the surrounding area is considered appropriate and presents a superior outcome when compared to pedestrian access along the entire Rosenthal Avenue frontage. Deletion of Condition 12 is therefore warranted and acceptable in this instance.*





Figure 3 (Source: TTW)

**Comment:**

It is agreed that the location of the loading dock and entry into the car park, coupled with the drop in grades along Rosenthal Avenue conspire to make the provision of pedestrian access along this frontage problematic, especially for less ambulant persons. The alternative offered by the applicant appears to be a better solution that facilitates access at improved grades through the site and also directs pedestrians away from the points of conflict identified above. However, this alternate arrangement is dependent upon the pedestrian bridge across Rosenthal Avenue being constructed as part of the development, as it forms a critical link in this network to negate the need for access along Rosenthal Avenue. As such, it is agreed that the requirement in Condition 12 for access to be provided along Rosenthal Avenue can be deleted subject, but only in conjunction with an amendment to the condition to require the construction of the pedestrian bridge across Rosenthal Avenue prior to the issue of the occupation certificate for the development. This would necessitate the lodgement and approval of an application under the Roads Act for the structure as a pre-cursor to its construction, inclusive of an assessment of the bridge under Part 5 of the EPAA as indicated by the applicant.

### Required Action:

Condition 12 is to be amended to read:

*“A pedestrian bridge shall be constructed across Rosenthal Avenue generally in the location indicated on the approved plans. Approval of an application under the Roads Act is to be obtained for the bridge prior to its construction. The bridge is to be completed to the satisfaction of Council and the Roads Authority prior to the issue of the occupation certificate for the development.”*

### INTERNAL REFERRALS

The plans and supporting documents were referred to the relevant professional Council officers. The following comments were provided regarding the proposed changes:

1. Senior Building Surveyor – raised no objections to the proposed changes with respect to compliance with Building Code of Australia.
2. Manager – Urban Design and Assets – raised no objections to the proposed changes.
3. Manager – Environment and Health – provided no additional comment or objection on the basis the changes related to planning and design issues.

### RELEVANT ISSUES UNDER SECTION 96(2) OF THE EPAA ACT

The application is required to comply with the criteria identified under Section 96(2) – Other Modifications. To this end, the requirements of this section of the Act have been met as follows:

#### **“(2) Other Modifications**

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

#### Comment:

In response to this criterion, the applicant has indicated that *“the proposed modification primarily relates to minor variations to the building envelopes and floor levels across the development. On this basis, the two schemes are considered to be substantially the same, retaining the key attributes of the approved development and therefore can be approved as a modification for the following reasons:*

- *the proposed amendments are permissible and comply or have the ability to comply with the conditions of consent of Development Consent 198/2015;*

- *the description, use and nature of the development is unchanged in that the proposal remains the redevelopment of the Rosenthal Car Park for a minimum of 500 car spaces, retail and open space;*
- *the modification does not introduce any new development or land use that has not previously been approved for the site;*
- *the area of the site and boundary of the proposed uses remain unchanged;*
- *the maximum building height remains unchanged;*
- *the overall number of car parking spaces across the site is comparable to that of the approved scheme and vehicle access from Rosenthal Avenue remains unchanged;*
- *the proposed modification will result in comparable traffic generation and car parking numbers;*
- *the proposed modification retains the public open space at roof level and an active retail frontage to Birdwood Lane; and*
- *the nature of impacts of the proposed scheme is comparable to those of the approved development.”*

On the basis of the applicant's submissions, it is agreed that the amended development will result in a development that is substantially the same (in fact, almost outwardly identical) in nature, bulk, scale and form as the development for which consent was originally granted.

- (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*

Comment:

The original application did not require the concurrence of the Minister or the granting of any General Terms of Approval from any other approval body. As such, the S.96 application does not require any further consultation or referral to any such body.

- (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, and (not relevant as the consent authority is the JRPP) and*

Comment:

In accordance with section 118(6) of the EPA Regulation 2000, S.96(2) applications for the modification of development consents issued by a regional panel (as per S.118(1)(c)), the application was notified for a period of 14 days by Council on behalf of the SNPP.

- (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.*



Comment:

Three (3) submissions were received during notification of the application. The issues raised in these submissions have been taken into consideration during the assessment of this application and do not warrant refusal or any further modification of any conditions. These issues are summarised later in the report.

Given the above, it is considered that the request to modify the consent has met the parameters for applications submitted under Section 96(2) of the Act.

**RELEVANT ISSUES UNDER EPA REGULATION 2000**

Clause 115 of the Environmental Planning and Assessment Regulation 2000 sets out requirements that all applications for modifications of consent under S.96 must comply with. The relevant requirements of Clause 115 and how they have been complied with are set out in the following table:

<b>CLAUSE 115 REQUIREMENTS</b>	<b>COMMENT</b>
<b><i>(1) An application for modification of a development consent under section 96 (1), (1A) or (2) or 96AA (1) of the Act must contain the following information:</i></b>	
(a) the name and address of the applicant,	Provided on application form.
(b) a description of the development to be carried out under the consent (as previously modified),	Provided on application form.
(c) the address, and formal particulars of title, of the land on which the development is to be carried out,	Provided on application form.
(d) a description of the proposed modification to the development consent,	Provided on application form and discussed in previous section.
(e) a statement that indicates either: (i) that the modification is merely intended to correct a minor error, misdescription or miscalculation, or (ii) that the modification is intended to have some other effect, as specified in the statement,	N/A
(f) a description of the expected impacts of the modification,	Discussed in following section
(g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,	Discussed in previous section
(h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),	Consent of the owner of the land has been provided with the application.
(i) a statement as to whether the application is being made to the Court (under section 96) or to the consent authority (under section 96AA),	N/A.
(j) and, if the consent authority so requires, must be in the form approved by that authority.	N/A.
3) In addition, if an application for the modification of a development consent under section 96 (2) or section 96AA (1) of the Act relates to residential apartment	N/A.  Development not subject to SEPP 65 or

**REPORT TO JRPP – S.96 DA 198/2015**  
**2 – 20 ROSENTHAL AVENUE, LANE COVE**

CLAUSE 115 REQUIREMENTS	COMMENT
development and the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A), the application must be accompanied by a statement by a qualified designer.	Design Verification Report.
(3A) The statement by the qualified designer must: (a) verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and (b) provide an explanation of how: (i) the design quality principles are addressed in the development, and (ii) in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development, and (c) 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.	N/A.  Development not subject to SEPP 65.
(3B) If the qualified designer who gives the design verification under subclause (3) for an application for the modification of development consent (other than in relation to State significant development) does not verify that he or she also designed, or directed the design of, the development for which the consent was granted, the consent authority must refer the application to the relevant design review panel (if any) for advice as to whether the modifications diminish or detract from the design quality, or compromise the design intent, of the development for which the consent was granted.	N/A.  Development not subject to SEPP 65.
(4) If an application referred to in subclause (3) is also accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in that subclause need not be verified to the extent to which they aim: (a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or (b) to improve the thermal performance of the building.	N/A.  Development not subject to BASIX.
(5) The consent authority may refer the proposed modification to the relevant design review panel but not if the application is for modification of a development consent for State significant development.	N/A.  Development not subject to SEPP 65 nor State Significant.
(6) An application for the modification of a development consent under section 96 (1A) or (2) of the Act, if it relates to development for which the development application was required to be accompanied by a BASIX certificate or BASIX certificates, or if it relates to BASIX optional development in relation to which a person has made a development application that	N/A.  Development not subject to BASIX.



**REPORT TO JRPP – S.96 DA 198/2015**  
**2 – 20 ROSENTHAL AVENUE, LANE COVE**

CLAUSE 115 REQUIREMENTS	COMMENT
has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A of Schedule 1 for it to be so accompanied), must also be accompanied by the appropriate BASIX certificate or BASIX certificates	
(7) The appropriate BASIX certificate for the purposes of subclause (6) is: (a) if the current BASIX certificate remains consistent with the proposed development, the current BASIX certificate, and (b) if the current BASIX certificate is no longer consistent with the proposed development, a new BASIX certificate to replace the current BASIX certificate.	N/A.  Development not subject to BASIX.
(8) An application for modification of a development consent under section 96 (1), (1A) or (2) or 96AA (1) of the Act relating to land owned by a Local Aboriginal Land Council may be made only with the consent of the New South Wales Aboriginal Land Council.	N/A.
(9) The application must be accompanied by the relevant fee prescribed under Part 15.	Fee paid upon lodgement.
(10) A development consent may not be modified by the Land and Environment Court under section 96 of the Act if an application for modification of the consent has been made to the consent authority under section 96AA of the Act and has not been withdrawn.	N/A.

Clause 118 of the Environmental Planning and Assessment Regulation 2000 sets out special notification procedures that certain applications for modifications of consent under 96 (2) and 96AA must comply with. The developments are:

- (a) *designated development,*
- (b) *State significant development,*
- (c) *any other advertised development where the application was made to a consent authority other than a council.*

This clause is relevant as the original consent was issued by the JRPP (now SNPP). On behalf of the SNPP, Council has satisfied these provisions.

#### **RELEVANT ISSUES UNDER SECTION 79C**

Pursuant to Section 96(3) of the Environmental Planning and Assessment Act, The following issues under Section 79C of the Environmental Planning and Assessment Act 1979 are relevant to the assessment of the application:

- (a)(i) the provisions of any environmental planning instrument**

#### **LANE COVE LOCAL ENVIRONMENTAL PLAN 2009 (SECTION 79C(1)(A))**

### Zoning and Permissibility

The amended development is unchanged in nature and use and continues to be defined as a 'car park', 'retail premises' and 'community facility'. These land uses were and continue to be permissible with consent in the B4 Zone.

The modified development remains consistent with the relevant objectives of the B4 zone as required by Clause 2.3(2) – Zone Objectives.

### Clause 4.3 – Height of Buildings

Under Clause 4.3 of the LEP, a maximum height has been adopted for a range of zones and specific sites within the Lane Cove LGA. Under the relevant map, the subject site has been identified as Category O, which equates to a maximum height limit of 15.0 metres.

To this end, Condition 4 of the consent indicated that "the height of the proposed building shall not exceed RL 91.00AHD and the maximum height shall not exceed 15m from the existing ground level at any point of the site."

Accordingly, the maximum height of the building remains at RL 91.0m and 13.7m above ground level, hence below the 15m height limit and therefore compliant with the maximum RL set under Condition 4.

### Clause 4.4 – Floor Space Ratio

Under the relevant floor space ratio (FSR) map adopted under Clause 4.4 of the LEP, the subject site has been identified as Category 7, which equates to a maximum FSR of 2:1.

To this end, Condition 4 of the consent indicated that "*the maximum gross floor area of the proposed development shall not exceed 6,210m<sup>2</sup> (round off)*". As indicated earlier in this report, the applicant has asked that this figure be increased to allow a maximum of GFA of 6,500m<sup>2</sup>, a request which has been acceded to. The proposed increase in the GFA by 290m<sup>2</sup> GFA up to a total GFA of 6,500sm<sup>2</sup> takes overall FSR of the development to 0.90:1, which is still significantly below the maximum FSR allowable of 2:1.

### Clause 5.10 – Heritage Conservation

The site is located adjacent to General Heritage Item I198 – St Andrew's Anglican Church Hall and Landscape Heritage Item I168 (street trees) in the road reserve of Birdwood Lane, in the vicinity of 87-93 Longueville Road. The JRPP was satisfied that the original proposal did not unreasonably impact on the heritage significance of these items. Given there is no change the proximity or extent of works of the development with respect to item I198, there is unlikely to be any additional impact as a result of the proposed modifications. With respect to Item I168, the trees in question were erroneously added to the register and have since been approved for removal under the consent granted to DA 47/17 for the early works on the site. As such, there are no further implications of this clause with respect to the application.

### **SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005**

The amended proposal raises no issues regarding the provisions of policy.

**STATE ENVIRONMENTAL PLANNING POLICY (STATE AND REGIONAL DEVELOPMENT) 2011**

Clause 20 of this policy cross-references Schedule 4A to the Environmental Planning and Assessment Act 1979 (“the Act”) which identifies a range of developments that – either due to their nature, scale, value, impact or location – are deemed to be of regional significance and which, as a result, require that the Joint Regional Planning Panel (JRPP) become the consent authority.

Pursuant to Schedule 4A(3) and (4), the original development application was referred to the Joint Regional Planning Panel (JRPP) due to it being “General development over \$20 million”, as well as “Council related development over \$5 million” respectively. As required by S.21(1)(b) of the SEPP, applications lodged under S.96(2) are also to be determined by the JRPP (now SNPP).

**STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007**

Schedule 3 of SEPP Infrastructure (iSEPP) identifies those developments that, due to either their scale or location (on or near an arterial road), require referral to Roads and Maritime Services (RMS) as traffic generating developments.

In accordance with clause 104 of iSEPP, the original application was referred to the RMS as it triggered to items under Schedule 3 given it comprised shops and commercial premises of 4,000m<sup>2</sup> or more and parking for 200 or more vehicles.

The S.96 application was not referred back to the RMS given the traffic related impacts of the modified development remain unchanged.

**STATE ENVIRONMENTAL PLANNING POLICY NO 55 – CONTAMINATED LANDS**

The original proposal considered SEPP 55 to ensure that the land is suitable for the proposed development. The Preliminary Contamination Report prepared by Ashwin Management Services (November 2015) concluded:

*“As the proposed use is predominantly car park and retail involving removal of all material from the site to a depth of approx RL 63, it is also reasonable to conclude that the site is suitable for the proposed development.”*

Whilst the extent of excavation for the basement levels has marginally changed from a maximum depth of RL64.00 to RL62.54, it is understood the Section 96(2) application would not materially affect the conclusions of the contamination investigations previously undertaken on site. Therefore, the amended proposal raises no additional issues regarding the provisions of this policy.

Contamination issues have subsequently been addressed in as part of DA 47/17 for the Early Works for the proposed development, for which a Detailed Site Investigation was prepared. Based on the findings of this report, consent was granted inclusive of conditions requiring (amongst other things) removal of contaminated soil and remediation of the site in accordance with a remediation action plans also submitted with the application.

## **INTEGRATED DEVELOPMENT**

The original application did not require the separate approval of any other referral body listed under S.91 of the Environmental planning and Assessment Act 1979 as such, did not constitute “Integrated Development”. Accordingly, the amended proposal also requires no such approvals.

### **(a)(ii) the provisions of any draft environmental planning instruments**

There are no draft environmental planning instruments relevant to the application.

### **(a)(iii) any development control plans**

#### **Lane Cove Development Control Plan 2010**

The amended concept plans submitted with this application show that the proposal remains generally consistent with the DCP in place at the time of the original consent, having regard for the fact this approval simply adopted building footprints, maximum height envelopes and empty floor plates rather than detailed floor plans, which have been submitted with the Stage 2 DA following further refinement of the design. A more comprehensive assessment of the extent to which the Stage 2 DA complies with the relevant requirements of the DCP is provided in the separate assessment report for that DA.

### **(a)(iv) any matters prescribed by the regulations**

There are no matters prescribed by the regulations relevant to the application.

### **(b) the likely impacts of the development**

As previously discussed, the height of the building and overall development footprint is to remain as currently approved. As a result, the amended development results in no greater impact on the amenity of surrounding properties.

In addition, the minor increase in gross floor area can be easily accommodated by the existing car parking provision, which is well in excess of that required under Lane Cove DCP, whilst the number of access points into the site and overall impact on traffic movement and the surrounding road network has not increased to any degree.

The proposed modifications are also not likely to result in any additional stormwater generation, soil erosion, tree removal or any other additional physical impact on either the site or surrounding area over and above the impact already anticipated and for which existing conditions of consent have already been imposed to address (or that will be attached to the consent for the Stage 2 DA).

### **(c) the suitability of the site for the development**

The subject site remains entirely suitable for the proposed development, consistent with its current B4 Mixed Use zoning and the character of the surrounding area; the location of the site and its proximity to Lane Cove Village Centre; and the availability of public transport and satisfactory utility services.

**(d) any submissions made in accordance with the Act or regulations**

The application was advertised for a period of 14 days between the dates of 2<sup>nd</sup> and 15<sup>th</sup> April 2017. During this period, three (3) submissions were received to this application as well as accompanying applications DA 46/17 and 47/17. Two of the submissions were in support of the proposed development and modifications to same, one of which also provided suggestions for landscaping and usage of the public area and the location of toilets. These will be addressed as part of the Stage 2 DA which includes details of proposed embellishment of the plaza and open space area and seeks consent for same. The second of these submissions also questioned a number of BCA compliance issues, which will be dealt with as part of the assessment of Stage 2 DA by Council's Senior Building Surveyor and either conditions of consent or changes to the plans if and as required.

The third submission raised a specific issue in relation to traffic movement in around the site and its impact on No. 71 Longueville Road (which is accessed off Birdwood Avenue opposite Birdwood Lane). In this regard, concern was raised that vehicles entering Birdwood Avenue from Longueville Road and then attempting to turn into No. 71 were forced to queue, thereby creating traffic problems as vehicles banked up further back into Longueville Road, a problem which would be further exacerbated by the new development. To address the issue, the submission suggested the provision of "Keep Clear" line marking across the affected area to ensure the entry into the site was not blocked by vehicles queuing across it.

The issue was discussed at the Local Traffic Committee meeting on 17<sup>th</sup> May where RMS objected to the proposed 'keep clear' line marking along the driveway of 71 Longueville Road (located in Birdwood Avenue) due to traffic safety grounds. Council has subsequently advised that they concur with the view of the RMS that 'Keep Clear' pavement markings are not appropriate at this location. Rather, 'Keep Clear' pavement markings are generally installed at intersections and emergency driveways to assist emergency vehicles but not at private residential or commercial driveways. Council has acknowledged that vehicles turning right into the driveway of 71 Longueville Road would restrict traffic flow along Birdwood Avenue creating congestion along Longueville Road. As such, following the construction of this development as well as the residential flat building at Nos. 2-22 Birdwood Avenue, Council will assess the traffic conditions and take appropriate action if and as necessary.

**(e) the public interest**

The proposed modifications are deemed to be in the public interest as they will facilitate a development that provides for improved access to the new public plaza and open space, and greater connectivity through and around the site and to the residential neighbourhood to the west.

**CONCLUSION**

Having regard for the provisions of Section 96(2) of the Environmental Planning and Assessment Act 1979, it is considered that the amended proposal is substantially the same development as that originally approved by the JRPP in April 2016. The development also remains compliant with the relevant provisions of Lane Cove LEP 2009 and Lane Cove DCP 2010.

The modified development results in no additional adverse impact on the environment or any adjoining or nearby residences over and above those addressed as part of the original approval and for which appropriate conditions of consent have already been imposed to mitigate (which remain relevant).



Furthermore, the issues raised in submissions from the public do not warrant refusal of the application nor further modification of the proposed development, the inclusion of new conditions or further modification to existing conditions.

On this basis, it is considered that the proposed modifications are in the public interest and will cause no prejudice to any person or persons who may have objected to the original application. It is therefore recommended that development consent no. 198/2015 be modified in the manner discussed in the preceding report and as identified in the manner below.

## **RECOMMENDATION**

That pursuant to Section 96(2) of the Environmental Planning and Assessment Act 1979, consent to Development Application No. 198/2015 be modified as follows:

- Condition 2 is amended to read as follows:
  - 2. *All buildings that are proposed to be erected on the site must be contained wholly within the concept building envelopes shown in the following drawings:*
    - *Site Plan, DA02, Issue A, Saunders Global Architects*
    - *Allotment & Contour Plan, DA03, Issue A, Saunders Global Architects*
    - *Level B3 Car Park Plan, AR-DA897, Rev 1, Scott Carver*
    - *Level B2 Car Park Plan, AR-DA898, Rev 1, Scott Carver*
    - *Level B1 Car Park Plan, AR-DA899, Rev 1, Scott Carver*
    - *Level B0 Car Park/Dock Plan, AR-DA900, Rev 1, Scott Carver*
    - *Level 01 Retail Plan, AR-DA901, Rev 1, Scott Carver*
    - *Level 02 Park Plan, AR-DA902, Rev 1, Scott Carver*
    - *Level 03 Roof Plan, AR-DA903, Rev 1, Scott Carver*
    - *Site Sections, AR-DA904, Rev 1, Scott Carver*
    - *North & West Elevations, AR-DA905, Rev 1, Scott Carver*
    - *East & South Elevations, AR-DA906, Rev 1, Scott Carver*
    - *Road Closure Details shown on Proposed Public Road Boundaries Plan;*
- Condition 3 is amended to read:
  - 3. *The maximum gross floor area of the proposed development shall not exceed 6,500m<sup>2</sup> (round off).*
- Condition 5 is amended to read:
  - 5. *The provision of a minimum of 500 car spaces within the development.*
- Condition 12 is amended to read:
  - 12. *A pedestrian bridge shall be constructed across Rosenthal Avenue generally in the location indicated on the approved plans. Approval of an application under the Roads Act is to be obtained for the bridge prior to its construction. The bridge is to be completed to the satisfaction of Council and the Roads Authority prior to the issue of the occupation certificate for the development."*

**Report Prepared by:**

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**List of Attachments**

Attachment 1 – Amended Conditions of Consent DA 198/2015